Lincoln University
Te Whare Wānaka o Aoraki
CHRISTCHURCH•NEW ZEALAND

Lincoln University Digital Dissertation

Assessing the Decision-making Process During the Transitional Time Period of Renewing Consents Under the Resource Management Act

---

A Dissertation

submitted in partial fulfilment

of the requirements for the Degree of

Master of Planning

at

Lincoln University

by

Joshua Francis McDonald-Davis

Lincoln University

2019

Abstract of a Dissertation submitted in partial fulfilment of the requirements for the Degree of Master of Planning.

Assessing the Decision-making Process During the Transitional Time Period of Renewing Consents Under the Resource Management Act

by

Joshua McDonald-Davis

Planning in the coastal marine area for aquaculture has had a turbulent history within New Zealand, reflecting the aquaculture industry's need for business security and certainty in the occupation of public water space while also balancing the protection of the coastal environment and rights of other users. A major obstacle looming in the near feature for the aquaculture industry is the 602 marine farms whose consents are set to expire at the end of 2024 and most, if not all, are expected to apply for replacement consents to continue their business. Replacement consents are not automatic, and this means 62% of the marine farming industry is facing a degree of uncertainty as to the future. The recent release of the cabinet policy directing drafting of the proposed National Environmental Standard for Marine Aquaculture seeks to address this by setting out a national baseline for the renewal of marine farm consents to ensure that there is greater certainty for marine farmers when it comes time to replace their consents. With a focus on replacement of marine farm consents, my research identifies the key issues surrounding marine farm planning in New Zealand. Through the use of semi-structured interviews, the research explores the current perceptions and views on the replacement of marine farm consents of industry experts and marine farmers. I compare the findings of the industry experts and marine farmers to help determine whether the National Environmental Standard addresses the concerns of the industry and improves the security and certainty of occupation while producing better environmental outcomes.

Keywords: Resource Management Act 1991, Marine Farming, Aquaculture, Mussel Farming, Replacement, Resource Consent, National Environmental Standard for Marine Farming, Property Rights, Planning, Perna canaliculus Business Security and Certainty

Acknowledgements

I would firstly like to take the time to thank each and everyone of the participants that took part in this research. I am incredaibly grateful for your kindness in giving up your time to talk to me. Without your insight and countless ideas I would not have been able to deliver this dissertation to a high standard.

Secondly, I would like to thank my supervisor, Hamish Rennie. Without your guidence and assistance this reasearch would not have been possible. The ability to bounce ideas and debate the finer points were unparalleled. The expertise you provided has helped shape a passion for the coastal marine environment which I hope to explore throughout my future pathways.

Finally I would like to thank my friends and family. Thank you to all the friends that were always there to keep me grounded throughout the process of the dissertation and made the year fly. To my family thank you for being supportive of all my adventures and university studies. I would especially like to thank my Mum and Dad, You have provided me with more support than I could ever ask for. I have fully appreciated it, thank you.

Table of Contents

List of Tables

List of Figures

AMAs	Aquaculture Management Areas
CMT	Customary Marine Title
ITQ	Individual Transferable Quota
LGA	Local Government Act
MCAA	Marine and Coastal Area (Takutai Moana) Act 2011
MFA1971	Marine Farming Act 1971
MFA	Marine Farming Association
MFE	Ministry for the Environment
MPI	Ministry for Primary Industries
MDC	Marlborough District Council
NES	National Environmental Standard
NES-MA	Proposed National Environmental Standard for Marine Aquaculture
NZCPS	New Zealand Coastal Policy Statement
NZKS	New Zealand King Salmon
PCR	Protected Customary Rights
QMS	Quota Management System
RMA	Resource Management Act 1991
TACC	Total Allowable Commercial Catch
TDC	Tasman District Council
ARRTPA	Aquaculture Reform (Repeals and Transitional Provisions) Act 2004
AEE	Assessment of Environmental Effects

Chapter 1

Introduction

The New Zealand marine farming industry was developed by a number of pioneering individuals who through trial and error built a booming industry which contributes significantly to regional economic development and New Zealand export markets (Gibbs, 2008). The marine farming industry is currently comprised of 1147 existing marine farms as of 2018 and employs around 3000 people throughout Northland, Coromandel, Bay of Plenty, Marlborough, Tasman, Canterbury and Southland which derived $600.8 million in revenue 2018 alone, with the New Zealand's Government ultimate goal of becoming a $3 billion industry by 2035 (Fisheries New Zealand, 2019). New Zealanders have had a long-standing association with the Coastal Marine Area (CMA) which often involves potentially competing activities which makes the occupation of the CMA (e.g., by aquaculture) fiercely contested.[1] How to manage the allocation and occupancy of a coastal marine resource is widely debated in the literature (Hardin, 1968; Ostrom, 1990).

The marine farming industry has become an integral part of the CMA with the 1149 existing marine farms operating under the Resource Management Act 1991 (RMA) guided by the specific conditions set out on their resource consents. The resource consent has created the questionable assumption that there is a property right for marine farmers occupy space in the CMA. However, by the end of 2024, a total of 602 marine farms consents are set to expire which equates to 62% of the industry. With no automatic right of renewal and for an activity to continue under the RMA the activity will require a replacement consent which is subject to the decision-making process of the regional authority and, in light of recent High Court decision in Clearwater Mussels Limited v The Marlborough District Council [2019] NZHC 961 declining an application for a renewal, there is business uncertainty as to the continuation of tenure of marine farmers to occupy space within the CMA.

To address this issue the recent release of the cabinet policy directing drafting of the proposed National Environmental Standard for Marine Aquaculture by the government has signalled the government's support for the continuation of the marine farming industry (Fisheries New Zealand,

[1] Under the Resource Management Act the Coastal Marine Area is interpreted as the foreshore, seabed, coastal water, airspace above the water, the seaward boundary of the outer limits of the territorial sea, landward boundary is the mean high water springs unless where the line crosses a river which the lesser of 1km upstream or the point up stream which is the width of the river mouth multiplied by five is the landward boundary.

2019). The NES-MA also sets out direction on biosecurity pathway management plans however this is outside the scope of this research. The government support has been created by providing a standard to streamline the renewal of marine farming consents. Thus, therefore, saving millions of dollars in the reconsenting cost that would have been incurred by the marine farmers.

The aim of this research is to assess the decision-making process during the transitional time period of renewing consents under the RMA concerning green-lipped mussel (perna canaliculus) farming in New Zealand. The outcome of this research was specifically going to develop a framework for replacing marine farming consents. However, due to the release of the cabinet policy directing the drafting of the proposed National Environmental Standard for Marine Aquaculture a methodological change was required. This change involved assessing the proposed National Environmental Standard for Marine Aquaculture 2019 against the findings from the research.[2]

To address the foci of this research, secondary questions were as follows:

- What mechanisms enable Maori participation in the replacement for marine farming consents?
- How will the National Environmental Standard for Marine Aquaculture affect public participation?
- What might the National Environmental Standard for Marine Aquaculture do for business security and certainty?
- Will the National Environmental Standard for Marine Aquaculture improve environmental outcomes?
- Is the National Environmental Standard for Marine Aquaculture likely to improve coastal management?

The dissertation structure is as follows. Following this introduction is Chapter 2 evaluates existing literature in property rights, allocation of property rights to the commons, community involvement and explores whether property rights create equity. This chapter highlights the key debates within the existing literature and explores some of the arguments by the different theorists. Chapter 3 summarises the marine farming legislative landscape with the relevant legislation to marine farming. This is mainly in relation to RMA, Fisheries Act, National Environmental Standard for Marine Aquaculture and subordinate legislation. Chapter 4 outlines the methodological approach taken in this research which describes the semi-structured interviews, the types of participants that were

[2] National Environmental Standard for Marine Aquaculture – policy approval and agreement to draft regulations 2019.

involved and the case study approach which was used. Chapter 5 presents the results from the outcomes of the semi-structured interviews into broad themes which arose. From the interviews and case studies identified the existing knowledge within the marine farming planning field. This is supplemented with the new knowledge that is outlined in Chapter 5 which has created the basis for the discussion. In Chapter 6 first sets out the core components of the National Environmental Standard for Marine Aquaculture. Then the discussion is centred around two themes of improving business security and certainty for marine farmers and promoting environmental outcomes, improving environmental outcomes relates to broader coastal management that the National Environmental Standard for Marine Aquaculture seeks to improve. Finally, Chapter 7 summaries the research and provides a number of points for further study in the future.

Chapter 2

Literature Review

The ownership of the coastal natural and physical resources within New Zealand under section 13(3) of the Marine and Coastal Area (Takutai Moana) Act 2011 'divests' it to local authorities[3] and the Crown the rights to the coastal marine area (Makgill & Rennie, 2011). The Resource Management Act 1991 (RMA) is where the crown and local authorities exercise their authority over the Coastal Marine Area. The fundamental property of the RMA prohibits the use (including occupation) of the coastal marine area, unless they have obtained a resource consent[4] or are allowed to by a rule in a plan. The current legislation divests any ownership of the coastal marine area but invests the decision-making to the Crown and local authorities. The assumption is that marine farmers have the right to occupy the coastal marine area once they have received the relevant resource consents this promotes the idea of property rights. Therefore, the allocation of the property becomes increasingly important for the incentives that these rights provide for marine farmers and how equitable these property rights are within a New Zealand Coastal Marine Area (CMA)context. Informing this research will be the review of predominate planning theories, literature surrounding property rights of allocation and fairness of these property rights.

2.1 The Role of Property Rights in The Coastal Marine Area

The role of property rights is rather ambiguous and widely debated with many definitions readily available through academic literature (Baron, 2014). Traditional property has been defined as a 'thing owned' but property is not necessarily a physical object (Krueckeburge, 2009). For example, it can be intangible property such as intellectual property (Krueckeburge, 2009). Property gives the sense of ownership therefore the sense of right. Property rights have been 'socially accepted' as providing groups or individuals with the ability to exploit resources for their gain, with a limited right to exclude others (Grafton, Squires & Fox, 2000). This exploitation of a property right can benefit the holder while potential harming others (Demsetz, 1967). Often there is the choice between sides of public good and private interest in property rights (Krueckeburge, 2009). The control over particular

[3] Local Authority – For the purpose of this dissertation the Regional and Territorial authorities may be referred to as Local Authorities. Nelson Tasman and Marlborough District Councils also have 'unitary authority' status which means that there is no regional council for their region and the regional council functions, powers and duties are exercised by the district council.

[4] Resource Consent – For the purposes of this dissertation the replacement of marine farm consents will be referred as resource consents acknowledging that it is a Coastal Permit under the RMA.

property rights often leads to conflict between groups and individuals with policy makers becoming reluctant to recommend "state intervention, markets, or privatization of property" over the control of resources (Argawal, 2001, p. 1650).

Property rights often come with an indicative set of rights often referred to as a bundle of rights. A 'bundle of rights' is a metaphor which is intended to signal a legal set of relationships between people and is not just the ownership of "things or the relationships between owners and things" (Johnson, 2007, p. 249). The principles of the bundle of rights for property have been developed through three sources which are common law, statutes and the constitution (Johnson, 2007). The central purpose of property rights within New Zealand consists of several separate and overlapping rights which are to possess, use and dispose of property (Guerin, 2003). In the 1960's Tony Honore endeavoured to list the 'incidents' of property ownership, which became known as the bundle of rights (Johnson, 2007). The following rights were adapted from Horone's list of rights by Makgill, (2009) which outline the commonly accepted bundle of rights, which are "The right to exclude, the right to possess, right to use, right to alienate, rights to receive income and duty to refrain from using property in a way that harms others". (Makgill, 2009, p. 86). This is where the bundle of rights metaphor is derived from. There are a number of different rights (sticks) which are comprised in the ownership of property and therefore create the concept of a bundle of rights. These rights are not considered to hold equal value but some of the property rights have more weight placed on them than others. A common occurrence is that the right to possess is more of right than to receive income (Johnson, 2007). However, Johnson argues that they each have their own strength as a right and one is not more important than another.

Not all of the rights are allocated or specified to the same owner (Guerin, 2003). So, in essence, the property may not be owned, but specific rights can be allocated to utilize the resource (Guerin, 2003). For example, the property owner might retain the right to possess but exercise their power to lease their right to use the property to a tenant (Johnson, 2007). The bundle of rights provides the holder with a great degree of either 'modularity', 'boundaries' and 'residual managerial authority' which can be unconcerned with the holder its self (Baron, 2014, p. 59).

Due to the fact that property rights are based on 'common law obligations and or statutes' they reflect the protection of societal interests, such as the environment's protection (Johnson, 2007). Property rights provide the holder to do what they like unless it is illegal and therefore break the provision of their rights which becomes legally enforceable (Johnson, 2007). Property rights may provide the holder with the use of the environment, but rights obligations put limitations on the use of the property to ensure that environment is not used in a way that is contrary to societal interests

(Johnson, 2007). The property rights ensure holders promote their obligations to keep environmental protection at the forefront of their use of the property. Within a New Zealand context, the property rights to the coastal marine area fall under the RMA. The RMA is administered by the Crown and administered by the local authorities generally provides the public the means to obtain a right to occupy the coastal marine area which is a privilege that is not conferred lightly (Makgill, 2009).

The bundle of rights that are granted under the RMA are designed to balance the competing demands to access and use of the coastal marine environment (Makgill, 2009). The RMA provides private use rights to occupation while still enabling public accesses to the coastal marine environment. RMA rights provide a number of Honore bundle of rights for occupation of the coastal marine area. The rights under the RMA for occupation are the right to use (occupy) the coastal marine space This right to occupy doesn't necessary prohibit other users from utilizing the space but does exclude other users from interfering with the space, the property rights are also transferable enabling holders to commodify the rights (Makgill, 2009). The other incentives of the property rights are that they have a maximum tenure of 35 years with the minimum time allocation of consent being 20 years which provides security and certainty for business.[5] This security allows for the certainty for companies to invest in the activity. However, there is also no right of renewal of the property rights which increases the uncertainty within mussel farming industry.

Makgill suggests that the occupation right is a 'hybrid' of rights between statutory and property rights. The rights provided by the RMA have an element which creates an intangible property right which affects the space in which it is occupied and a statutory right which affects its potential to be transferred (Makgill, 2009). The rights under the RMA enable the ability to receive income which needs to be recognised (Makgill, 2009).

The ability to receive income from property rights aligns with John Locke's labour theory of property rights. This theory is based on one's utilization of their body through the form of labour with resources which become entwined with one's self and the product of one's labour therefore becoming their property (Krueckeburge, 2009). Locke argued that private property was established under natural law. Natural law is established under the idea that land are considered common property which is open access (Vaughn, 1978). This meant that everyone has access to the commons and through labour Locke believed that private property could be derived (Vaughn, 1978). Lockean theory in terms of mussel farming would suggest that by mussel farmers labouring to build the structures, cultivate mussels and harvest mussels within the common marine area they would

[5] RMA, S 123A(2)

therefore create ownership of the water space. The Lockean position on commons and private ownership reflects the tension and conflict that shows in multiple uses of the resources (Krueckeburge, 2009). Predominantly the property owners' conflict is around the state's regulation of rights (Krueckeburge, 2009). This raises a main obstacle of who gets the right to perform this labour which in turn raises the question of how to allocate the common pool resources. The Lockean theory provides one way of allocating resources but there have been number of other allocation methods, which are discussed in the next section.

2.2 Allocation of Property Rights to the Commons

There has been a number of different schools of thought on how to allocate the commons with multiple variations. These are: the institutional change in management with community-based approaches, or the allocation of the full authority to an external agency to regulate the commons which is predominately the State (Wade, 1987). The allocation of common pool resources is a fundamental problem for resource management and is widely debated (Berkes, 2006). Over the years there has been major transformation in the perceived ways on how to allocate common pool resources (Berkes, 2006).

On a global scale there are multiple commons that are shared such as the sea, air and carbon dioxide discharges (Denmark, 2010). International commons are interwoven and have an extremely complex nature or relationship (Denmark, 2010). Commons exist because there is no single decision maker that holds the power to make decisions on the global commons (Wijkman, 1982). Therefore, the method of allocation is important. A number of methods have been calling for institutional change, while others call for the full establishment of property rights over a common and do not believe in the need for an external authority (predominantly the State) to manage the commons (Wade, 1987).

Commons traditionally have been subject to an absence of sufficient management enabling multiple individuals the ability to maximise their positive utility which can led to over-exploitation and the demise of many commons. Each individual that is privy to the commons seeks the maximum benefit from the commons (Hardin, 1968). The rationale behind the exploitation of the resource is that each individual seeks to gain maximum utility by utilizing the commons to point where it is degraded (Hardin, 1968). The degradation of the common is achieved in Hardin's example of a herdsman adding one additional cow to the grassland common. The herdsman will receive a positive utility from the extra cow added but the common will incur a negative utility as there is more pressure on the common (Hardin, 1968). The additional utility gained from the common provides the rationale

for a herdsman to add another and if this same rational is shared by all of the herdsmen it will lead to the 'tragedy of the commons' (Hardin, 1968).

The New Zealand Mussel Farming Industry almost experienced this exact fate of the tragedy of the commons during the late 1990's and early 2000's where vast tracts of New Zealand's coastal marine area was applied for, for the purpose of marine farming (explained in detail later in this dissertation). Hardin (1968) in later literature suggested the privatisation of the commons as a solution. The privatisation of the commons would involve subdividing it and assigning property rights and requires each owner to be responsible for the management and care of their property (Hardin, 1992). The privatization of many common resources has taken place within a New Zealand and international context with various types of property rights attached to commons management. The use of privatization and government controls have been used to allocate the commons (Turner, 2017). Many of the property rights are allocated on a market-based model which has neoliberal connotations (Turner, 2017). Property rights are often allocated through state mechanisms on a market principle (Turner, 2017).

However, the privatization of property rights to the commons has some serious implications which can have flow on effect to the users and the commons. The privatization of property rights can affect the distribution of the commons, 'disenfranchise the poor', effect the efficiency of the resource, lead some users to destructive practices and increase compliance and resulting enforcement issues (Bradhan, 1993, p. 88). The counter to commons administered by the state or privatization is the self-organisation of groups for the management of commons (community-based management) which was promoted by Ostrom 1990.

The community-based management approach seeks the full participation of "communities and resource users" in the decision-making process based on the knowledge of local institutions, including regulation and enforcement (Armitage, 2005, p.703). This management approach allocates the local group of users the authority to become the decision makers for the management of the commons (Armitage, 2005). The principle of the community-based management of the commons are clearly defined boundaries, congruence between appropriation and provision rules, local conditions, collective-choice arrangements, monitoring, graduated sanctions, conflict resolution mechanisms, minimal recognition of rights and for common pool resources that are part of large systems which will require nested enterprises (Ostrom (1990) as discusses in (Armitage, 2005). These principles may be applied effectively in managing the commons.

In a community-based approach, property rights are held as a community. Schlager & Ostrom (1992) defined five important property rights which are applicable and draw upon 'the bundle' of rights in the community-based management setting (Agrawal & Ostrom, 1999). The bundle of property rights are access, withdrawal, management, exclusion and alienation, these are all important dimensions to rights in the community-based management approach (Schlager & Ostrom, 1992). These property rights have similarities to other concepts of managing the commons however these rights are implemented under collective choice action which rely heavily on a set of operational rules that are enforced (Schlager & Ostrom, 1992). The sources of property rights can vary. Some of the rights can stem from the state (which become De jure) or from within the right holders themselves who develop a set of property rights to manage the resource (which are De Facto) (Schlager & Ostrom, 1992). Enforcing De Facto property rights, relies on the property rules actually being enforced by other property right holders with the community or an outside authority (Schlager & Ostrom, 1992). It most cases De Facto rights are not recognised by the government but in others the De Facto rights can be recognised by the courts and community enforcement in some cases can have serious implications (Schlager & Ostrom, 1992).

Predominantly the community-based management is nested in small systems with a relatively low number of users of the commons. The community-based approach has been scaled up to address global commons, including global marine commons (Ostrom, Burger, Field, Richard, Norgaard & Policansky, 1999). The community-based management approach also allows for there to be cultural diversity which brings a diversification in the way to organise and control common pool resources (Ostrom, et al, 1990). This is an alternative to state driven, neoliberal top-down approaches through the privatisation approach offered by Hardin. An alternative paradigm for the management of the commons is the Integrated Coastal Management (ICM)approach. This approach promotes the use a multiple-use management approaches with the 'wise' judgment of decision makers and public consultation (Rennie, 2002).

An integrated coastal management method is a transdisciplinary approach which is based on making rational decisions concerning the rational use of the coast, ocean and space (Christie, 2005). The process is to eliminate the 'fragmentation' in single sector management systems (Christie, 2005). This splits the governance of the commons between the jurisdiction of national, regional and local groups (Christie, 2005). Integrated coastal management incorporates a holistic, integrative and interactive approach to planning processes for managing the complex coastal environment (Thia-Eng, 1993). It tries to maintain the "functional integrity of the coastal resource systems", reduce conflict in coastal marine space, manage the health of the environment and provide for multi-sectoral development (Thia-Eng, 1993, p.45).

The key components of the ICM that are used for planning are land use controls, permit systems, marine protected areas, conflict resolution, fisheries management and planning (Christie, 2005). New Zealand has adopted the integrated coastal management approach through the overarching legislation for the coastal environment, the Resource Management Act and the Fisheries Act which incorporates a number of the key components (Makgill & Rennie, 2012; Bremer & Glavovic, 2013; Sorensen, 1993). The RMA is the core promoter of the integrated coastal management, while it does not define integration it has been deemed an 'exemplary' model of implementing the integrated coastal management model (Bremer & Glavovic, 2013).

The bundle of property rights in integrated coastal management fall under the RMA which are the ability to exclude, possess, use, transfer and the length of tenure (Makgil, 2009). However, the ICM model under the RMA has decoupled fisheries management and left that under the jurisdiction of a separate government Ministry (currently the Ministry of Primary Industries) which has enabled a dual permitting system to exist (Rennie, 2002). Under the Fisheries Act 1996 marine farmers must seek an undue adverse effects test that takes into account the effect on fishing activities of a proposed new marine farm. This is tied to the marine farming coastal permit under the RMA. Property rights which are allocated under the Fisheries Act are 'identical' to the ones which are allocated under the RMA for marine farming (Rennie, 2002). The flexibility of the property rights under the Fisheries Act and RMA may be affected if specific conditions are placed on the permit which restrict the activity. An important component of the bundle of property rights under the RMA and the Fisheries Act is public participation.

The main components which implement the model of integrated coastal management are the consenting application process under the RMA which involves public participation and the preparation of planning documents (Makgill & Rennie, 2012). McGinnis & Collins (2013) perceive the main stake holders that are affected by marine farming and should have the right to participate are 'national and regional policymakers, Maori, scientists, marine advocates, and other users of marine space'. Among the 'other users' are the recreational sector who are heavy users of the coastal marine area and are considered to be an influential power in the decision-making process (Banta & Gibbs, 2009).

Recently in New Zealand, there has been an emerging interest in the way of managing the coastal marine area through spatial planning. Marine spatial planning is an ecosystem-based management approach to balancing human interactions within the coastal marine area (Peart, 2017). Spatial planning enables the allocation of specific human based activities to certain marine areas for

different uses (Ehler & Douvere, 2009). Ehler & Douvere (2009) suggest that the main characteristics of marine spatial planning are integrated management, place based or area-based, adaptive, strategic, anticipatory and a participator process. The purpose of the spatial planning is to organise human activities which are competing or have impacts on the environment in way that is effective, efficient and provides benefits to the allocated location of the activity (Eggenberger & Partidario, 2000). Marine spatial planning is a well-accepted "strategic planning process" internationally (Peart, 2017, p. 4)

Marine spatial planning has a diverse nature, however the key components that they have include a legal directive and the need for political power to implement marine spatial plans (Rodriguez, 2017). In the initial stages there should be the clear identification of objectives, inclusiveness, plans should be in accord with the human and finical resource with feedback and adaptive management methods accordingly (Rodriguez, 2017). Critical to the success of marine spatial planning is transparency, stakeholder participation, leadership and political will (Rodriguez, 2017).

Within the Hauraki Gulf of New Zealand there is a marine spatial planning process Sea Change Tai Timu Tai Pari which is New Zealand's first marine spatial plan (Peart, 2017). The Sea Change Tai Timu Tai Pari consisted of a group of 16, comprising fishing, farming, aquaculture, environmentalists and community interests as well as the local holders of Mana Whenua (Peart, 2017). This was a collaborative working group which operated on a consensus decision making approach (Peart, 2017). The sea change was based on four Maori environmental concepts "Kaitiakitanga and Guardianship; Mahinga Kai – replenishing the food baskets; Ki Uta Ki Tai – ridge to reef or mountains to sea; and Kotahitanga – Prosperous communities" (Peart, 2017, p. 6).

This led to the management of the ecosystems, the enhancement of habitats through the use of retirement or mitigation and remedying measures (Peart, 2017). It also took an integrated management approach of managing the runoff from the land and also developed 13, recommended protected areas (Peart, 2017). The Hauraki Gulf supports a strong aquaculture industry and the Sea Change Tai Timu Tai Pari supported the industry by providing aquaculture with 13 additional areas where aquaculture was deemed appropriate (Peart, 2017). This therefore provided marine farmers with areas where they can be certain that there will be allocation of space. This enables a strategic approach to the management of the coastal marine environment which uses integration of the coastal marine values.

2.3 Does community involvement increase better outcomes in the Coastal Marine Area?

Community involvement through participation is a strong part of the planning process. The purpose of community involvement and public participation is to ensure that the community influences the policy makers' decisions and creates better policy while utilizing local knowledge (Rydin & Pennington, 2000). The property rights and the allocation method are all governed by a number of different polices and plans that are informed by a number of different avenues. The importance of the community involvement is subject to the final outcome of these polices and plans.

Community involvement has been seen as a way of reducing opposition to the planning and policy outcomes by creating a deliberative process (Rydin & Pennington, 2000). The public participation approach has emerged due to the failures of 'managerialism' and the response to governance failures (Ansell & Gash, 2008). Community involvement and public participation has been coined to reduce conflict during the process of policy development and overall producing legitimacy throughout the process (Rydin & Pennington, 2000). The level of participation can vary depending on the context or governance. Arnstein's (1969) ladder of citizens participation remains 'pivotal' to debates surrounding the level of participation and degree of power that citizens hold over the outcomes of participation (Lane, 2005).

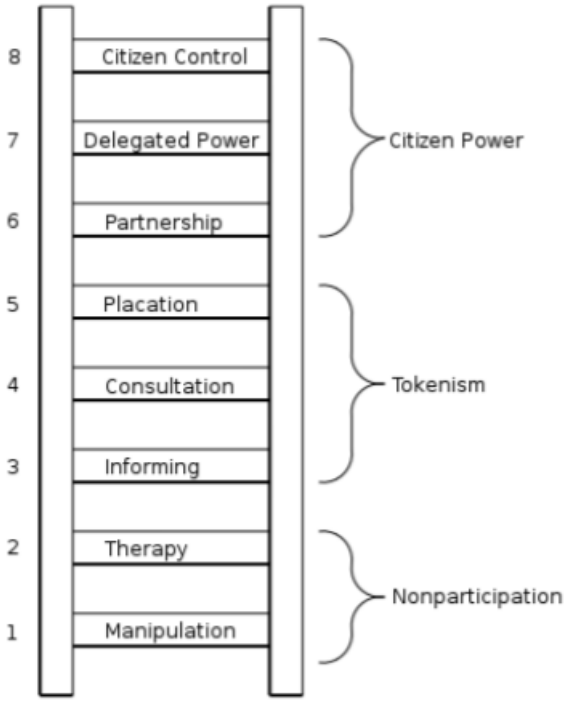

Figure 1: Arnstein's Ladder of Participation. Source Arnstein (1969)

Arnsteins ladder of participation highlight the core types of citizen participation and the power each give to the citizens (Arnstein, 1969). Manipulation and therapy represent the lowest end of the scale of citizen power. These provide community with non-participation with the objective of allowing power holders to 'educate' or 'cure' the participants and not enable community to be a part of the planning process (Arnstein, 1969). The next rungs on the ladder represent tokenism which allows the citizens to hear and be heard but the conditions under tokenism is the absence of the citizens power to ensure that their views are imbedded in the outcomes (Arnstein, 1969). The last degree of citizen power is where communities can enter into partnerships, delegation of power or gain citizen control which enables the greatest participation (Arnstein, 1969).

The property rights allocation methods highlight the differences in the ability for community participation to affect outcomes on policy. Arnstein, believed that "there is a critical difference between going through the empty ritual of participation and having the real power needed to affect the outcomes of the process" (Lane, 2005, p. 284). The privatisation of property rights to the commons leans towards the non-participatory or tokenism on Arnstein's ladder. The community management of the commons tends to provide the community with central power and uses citizens as a mechanism of management. The integrated coastal management paradigm sits in the middle of the two as it has the characteristics of tokenism where the community is either informed or consulted in the process. The need for community involvement within the management of the coastal marine area is great to ensure that outcomes are beneficial to all users as there is often conflict within these commons.

There are a number of key principles when it comes to the method of public participation that need to be accounted for. Some of the common components that are important in the participation process for communities and individuals have been identified by Ansell & Gash (2008). Within the process is the importance of managing power imbalances ensuring that the participants are on an 'equal footing' and no group has greater power than the other, incentives to participate are based on one's perceived gain by participating in the process and as stakeholders there can be a direct link between participation and concrete, tangible, effectual policy outcomes (Ansell & Gash, 2008).

Previous antagonism between stakeholders has been often linked to reduced cooperation increasing negative outcomes and it has been argued that there should be measures taken to remediate the antagonism between stakeholders (Ansell & Gash, 2008). Ansell and Gash (2008) argue that fair and equitable leadership is necessary for a successful and collaborative process with institutional design that has procedural legitimacy. Face to face dialogue is an important part of the collaborative participation process with communication at the heart of collaborative processes, trust building,

shared understanding and finding the 'common ground' between the stakeholders are important processes within the collaboration process which enables stakeholders to actively achieve a goal together.

Intermediate outcomes are important as they represent small wins which are essential for creating momentum in the participation process (Ansell & Gash, 2008). These all represent the important characteristics of collaborative participation. They legitimise planning, reduce conflict and improve authority accountability (Curtis, Ross, Marshall, Baldwin, Cavaye, Freeman, Carr, & Syme, 2014).

The main form of public participation in the replacement of marine farming consents comes under the RMA. The predominate method is through the submission process on notified marine farm consents or the development of planning documents (Makgill & Rennie, 2012). Public participation acts as an important way of building and maintaining public interest in the polices and plans that are developed (Makgill & Rennie, 2012). The main mechanisms for public participation for preparation of coastal plans under the RMA is the right to lodge a submission on a proposed plan, supporting the submission at a public hearing, and then if necessary, lodging an appeal to the Environment Court (Makgill & Rennie, 2012). For a marine farming consent, it will either go through a public notification, limited notification or non-notified process which will limit the amount of public participation, this is explained in more detail under the legislative landscape (Chapter 3). A primary concern is whether the property rights for marine farming's method of allocation and public participation provide a fair and equitable way of manging the coastal marine area.

2.4 Do the property rights create Equity?

Policies and plans that have the purpose of shaping property play a central role in promoting or inhibiting the equitable distribution of the benefits associated within the property rights (Meinzen-Dick, Brown, Feldstein, & Quisumbing, 1993). An overriding theme of public policy is to create intergenerational equity (Memon & Gleeston, 1993). To achieve this intergenerational equity the actions of the current generations should not affect the equity of future generations (Memon & Gleeston, 1993). Understanding that property rights and the policy developed in the present play a critical role in managing the property rights effect on equity. The RMA has been instrumental in providing the property rights, method of allocation, management and community involvement through public participation. The equity in the management of the coastal marine area is of high

value to multiple users. The RMA in itself, tries to balance the equity of natural and physical resources, social, economic and cultural well-being.

The decision made around the replacement property rights, will have to account for intergenerational equity which is stipulated under the purpose of the RMA. The replacement of property rights can lock a generation out of a resource. The decision for replacement of property rights should be made with future generations in mind. The current marine farm space that is allocated raises some important 'socio-economic' implications on the access to resources such as the common marine area by different sectors of the community (Memon & Gleeston, 1993). There may be a high socio-economic risk and large environmental considerations that need to be taken into account. The decision-making process for the replacement of property rights should enable mussel farmers to potentially continue but not at the expense of environment, or the community wellbeing in the pursuit of creating intergenerational equity. Any decision on the replacement consents must be made with the fairness and equity at the forefront of the agenda as there are high degrees of socio-economic risk at stake.

2.5 Summary

Marine farming has a bundle of property rights which is an important concept to understand. The property rights are the key to the management of the coastal marine area in relationship to the users and the different values that are placed on it. These property rights, methods of allocation, community involvement and equity must be taken into consideration in the decision making on the replacement consents. The process creating property rights is therefore a critical step in the management of the coastal marine area. The following chapter of this dissertation outlines the marine farming legislative context and the process of creating property rights while incorporating the timeline of the important events in marine farming history in the coastal marine area.

Chapter 3

New Zealand Marine Farming Legislative Landscape

To contextualise the literature review and the decision-making process associated with the replacement of mussel farming resource consents it is critical to understand the legislative background that underpins marine farming activities in New Zealand. This analysis will be augmented by peer reviewed academic articles to add substance. This will provide an insight into the history of mussel farming legislation as it has progressed through time. The main pieces of legislation analysed are the Resource Management Act 1991, Fisheries Act 1996 and the Marine and Coastal Area (Takutai Moana) Act 2011. These are current and are integral to the management and replacement of resource consents, but the chapter also opens with a brief discussion of the preceding legislation to help contextualise the current situation.

3.1 Pre-Resource Management Act

Central to the development of the mussel farming industry in New Zealand was the Marine Farming Act 1971 (MFA1971) (Rennie, et al, 2009). The MFA1971 built on older legislation (that has little relevance now) but offered some important changes in the management of the marine farming activities which remained in force until the introduction of the RMA (Rennie, 2002). Within the MFA1971 lay a lease and licensing system which provided the ability for the activity to occupy coastal marine space. The core difference between the lease and licences was that a lease provides holders with the exclusive right to an area which enabled holders to exclude other users from the allocated space. While a licence provides the holder the right of occupation of a marine space, but the holder could not alienate other users from the allocated space (Rennie, 2002). The duration of the lease and licences was for a term of 14 years with the right to renewal for one or more terms (Rennie, 2002).

The Marine Farming Act 1971 also provided the decision makers with the ability to accept or decline applications for marine farms, enabled better freedom for marine farmers to choose the size of marine farms than previously and provided government with the ability to create marine farming plans (Rennie, 2002). Several non-statutory plans were developed by a number of regions on the basis to manage and reduce conflict between users (Rennie, 2006). This was during the time in New Zealand planning history where activity-based management was the predominate planning mechanism in place for managing natural and physical resources (Rennie, 2006). This legislation

provided a relatively strong bundle of property rights which enabled the holder to exercise a number of Horone's list of property rights (Makgill, 2009). A contrasting approach to the activities-based planning of marine farming was the implementation of fishing rights under the Fisheries Act 1986.

3.2 Fisheries Act 1986

The implementation of fishing rights through the form of a Quota Management System (QMS) spelled out an alternative method of managing the natural and physical resources in New Zealand for the marine environment under the Fisheries Act 1986. This act created a market-based approach to the environmental regulation surrounding the ability to harvest New Zealand wild fisheries (Yandle & Dewees, 2008). The QMS saw the application of the Individual Transferable Quota (ITQ) which allocates a percentage of the sustainable Total Allowable Commercial Catch (TACC) of a species to holder of the quota.

The ITQ system in the essence has created very strong property rights for quota holders (Bess & Rallapudi, 2007). The rights prescribed under the ITQ give holders the flexibility to carry out their fishing operations as they see fit with little restrictions (Bess, 2005). The rights are also divisible and transferable to enable greater efficiency for ITQ holders (Bess, 2005). Compared to the marine farming legislation the ITQ rights are set in perpetuity (Bess, 2005). This has formed strong security around the ITQ rights which allows holders to seek long-term investments which provides business security and certainty which is a positive utility benefit to the holder (Bess, 2005). This is a stark contrast to the rights prescribed for marine farming activities under the Resource Management Act.

3.3 Resource Management Act 1991

During this time period there was a paradigm shift in New Zealand's planning landscape which was caused by a 'neo-liberal ideology that swept across New Zealand' in the early 1980's (Makgill & Rennie, 2012). The new ideology brought about a review of the legislation that manages New Zealand's environment (Hildebrand & Norrena, 1992). This review ultimately ended up with the Government of the day repealing 59 individual statutes and modified 50 sets of regulations. The main planning legislation to emerge from this was the Resource Management Act 1991 (RMA) (Makgill & Rennie, 2012). The RMA allowed for a market-based approach to make decisions on how best a resource could be used to maximise the efficiency of that resource (Memon, 2002). The purpose of

the Resource Management Act is to promote the sustainable management of natural and physical resources of New Zealand[6]. The RMA signified the shift from a 'command and control' approach under the former Town and Country Planning Act to an 'effects based' approach to planning in New Zealand (Memon, 2002).

The transition from the MFA1971 to the new planning regime under the RMA was considered to be 'messy' (Rennie, 2002). The fundamental properties of the change in planning regimes was the transition of leases, licences and plans into the RMA framework. This meant that the majority of leases and licensees did not have to undergo the scrutiny of the effect-based approach of the RMA while the current plans were amalgamated into the regional coastal plans (Rennie, 2002). Fisheries however lay outside the scope of the RMA.

It also became the role of the Regional Council to allow for the allocation of space for marine farming to occur while the Ministry of Fisheries (now subsumed as Fisheries New Zealand in the Ministry for Primary Industries (MPI)) dealt with the effect of aquaculture on fisheries for central government. This created a dual permitting system where marine farmers must gain a coastal permit from the Regional Council and an aquaculture decision from MPI (MPI, 2013). The aquaculture decision is derived from an Undue Adverse Effects (UAE) test. The matters that Fisheries New Zealand must have regard to under s186GB of the Fisheries Act 1996 is the location of the activity, the effect of the marine farm on fisheries or the proportion of the fishery likely to become affected, the degree of the potential exclusion of fishing, the identification of other areas where the fishing could be carried out, the potential increase in cost of fishing and the cumulative effect on fishing (Fisheries Act 1996, 186GB).

The purpose and principles of the Resource Management Act is set out under Part 2, with the purpose of the RMA outlined under section five. The purpose of the Resource Management Act is to promote the sustainable management of natural and physical resources (RMA, 1991). The core components to achieving this part of the Act are assisted through the guidance of three principles. These are matters of national importance, other matters and the Treaty of Waitangi. The predominate guidance that these principles give under the Act is that all person exercising the functions and powers under the act shall recognise and provide for the preservation of the natural character of the coastal environment (including the coastal marine area) and the protection from any inappropriate subdivision, use and development.[7] Additionally, the mandate of all person exercising

[6]RMA, s 5
[7] RMA, s 6(a)

functions and power under the Act is that they shall take into account the principles of Treaty o Waitangi.[8]

Part Three of the Act sets out the duties and restrictions on the natural and physical resources. In regard to the coastal marine area section 12 sets the restrictions on activities and expressly states that no person may occupy any part of the common marine coastal area unless it is allowed by a National Environmental Standard, Proposed Regional Coastal Plan or a resource consent.[9] Marine farm activities require a coastal permit to occupy space to carry out their activity unless classed as a permitted activity by one of these mechanisms.

These coastal permits for marine farming are where the property rights for marine farmers are found. The bundle of rights that the coastal permit confers are the right to occupy the coastal marine area (which does not necessarily mean prohibit access of others), transfer the permit, receive income and the right to utilize for a set period of time. This bundle of rights under the RMA are stronger than the previous legislation (Rennie, 2002).

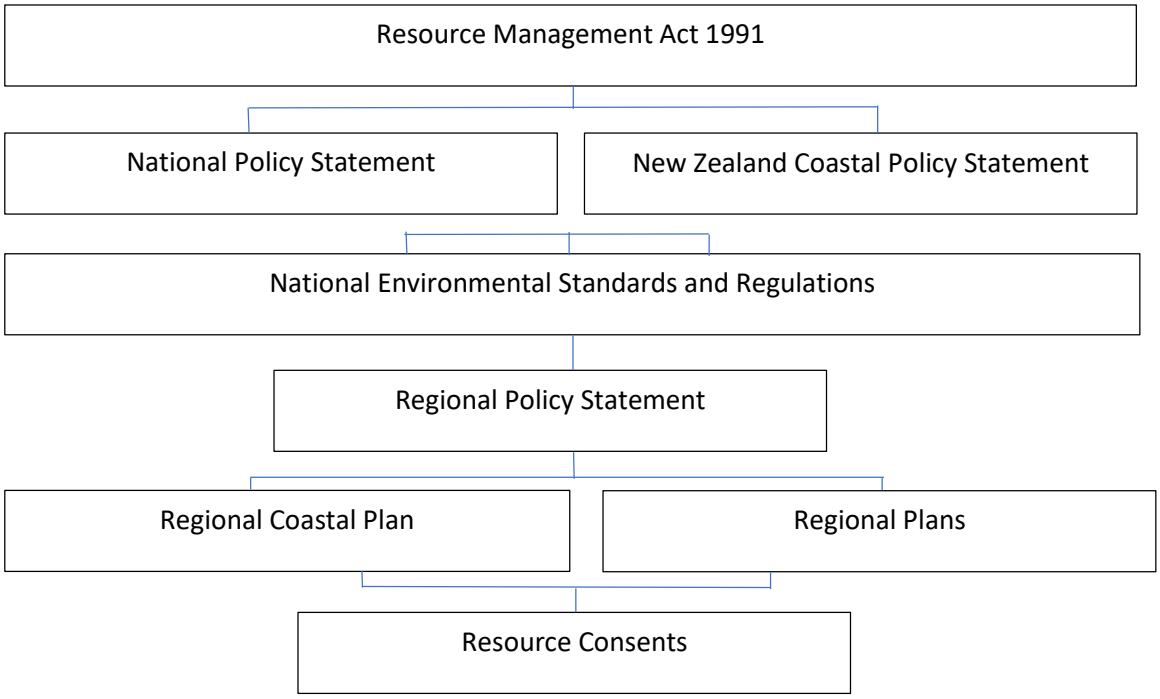

Figure 2: Hierarchy of New Zealand Coastal Planning Framework.

The coastal permits are guided by a number of key planning documents which are mandatory and to be taken into consideration within the decision-making process of resource consents. These are the New Zealand Coastal Policy Statement, Regional Policy Statement, Regional Coastal Plans and

[8] RMA, s 8
[9] RMA. s 12(2)(c)

National Environmental Standards represented in figure 2. These planning tools are required to aid in achieving the purpose of the Act. These planning documents set out objectives, policies and rules which address the management issues of the coastal marine area specifically relating to marine farming.

3.4 Hierarchy of New Zealand Coastal Planning Legislation

Central to achieving the purpose of the Resource Management Act is the vertical integration of a number of planning documents. The RMA is situated on top of the coastal management hierarchy and then followed by the NZCPS. The NZCPS is mandated under the RMA to promote the sustainable management of the natural and physical resources within the coastal environment while achieving the purpose of the Act (Makgill & Rennie, 2012). The NZCPS is administered by the Department of Conservation and the first NZCPS was released in 1994, then was updated and replaced by the current NZCPS in 2010 (Bremer & Glavovic, 2013). The aim of the NZCPS is to harmonise and create consistency of the management of the natural and physical resources within the coastal marine environment (Bremer & Glavovic, 2013).

The NZCPS set out a number of guiding objectives and policies that local authorities under the RMA must take into consideration in the decision-making process surrounding the use and development of the coastal environment (Bremer & Glavovic, 2013). The NZCPS 2010 tries to weight the different competing 'factors' and 'interests' of the coastal environment to try and achieve better environmental outcomes (Hewison, 2015). The policies of the NZCPS reflects the intention of the RMA, like under Policy 3 precautionary approach which is crucial to underpinning the decision-making processes (Hewison, 2015). Policy 8 of the NZCPS 2010 relates directly to aquaculture and refers to the recognition of significant existing and potential contribution of aquaculture to the social economic and cultural wellbeing.[10] This directs Regional Coastal Policy Statements and Regional Coastal Plans having provisions for aquaculture activities in appropriate parts of the coastal environment, with the need for high water quality and the need for land based facilities.[11] The NZCPS also includes a number of other policies surrounding the management of the coastal environment which inform and direct the local and regional authorities on the Regional Coastal Policy Statements, Regional Coastal Plans and consent decision making processes (Hewison, 2015). Due to recent litigation surrounding aquaculture applications, Policies 13 and 15 of the NZCPS have become very important in the decision-making process.

[10] NZCPS 2010. Policy 8
[11] NZCPS 2010. Policy 8(a)

The next fundamental documents in the hierarchy are Regional Policy Statement and Plans (Dixon et al, 1997). The regional policy statements must be drafted by regional councils or unitary authorities in conjunction with a number of stakeholders such as other local authorities, crown ministers, tangata whenua and public notification must be given before initiating the public participation process (Hewison, 2015).[12] The regional policy statements provide an overview of the resource management issues and provide polices and methods to achieve integrated management of natural and physical resources (Hewison, 2015). Regional policy statements do not include any specific 'rules' on resource management issues.

The regional policy statements must give effect to any National Policy Statements and the National Coastal Policy Statement, have regard to any other management plans or strategies which are prepared under other acts and take into account any planning documents which have been created by local iwi authorities (Hewison, 2015). This includes any relevant fisheries regulations or documents prepared by a Customary Marine Tile Group (Hewison, 2015). The regional coastal policy statement should address aquaculture within the policy statement and highlight objectives and policies to inform the activity.

Regional coastal plans set out objectives, polices and rules which manage the natural and physical resources within the coastal environment. These plans dictate what types of activities can be carried out within the coastal environment of the region while achieving sustainable management of the natural and physical resources. The RMA allows local authorities to categorise activities under these regional plans into one of six different activity status. These activities status are, permitted activity, controlled activity, restricted discretionary, discretionary activity, non-complying activity or prohibited activity.[13] The level of environmental effect dictates what class of activity a proposed activity will be. If the activity complies with all relevant regulations it would be considered permitted and does not require a resource consent.[14] On the contrary if any activity that is identified in a plan as 'prohibited' it cannot be granted.[15] If an activity is classed as a controlled activity, restricted discretionary, discretionary activity or a non-complying activity they must gain a resource consent from the local authority to carry out the proposed activity.

The resource consent will then be processed by the appropriate Regional Council/Unitary Authority which assesses the activity on any actual or potential environmental effects, the NZCPS, Regional

[12] Unitary authorities mean a territorial authority that has the responsibility, duties and powers of a regional council as there is no regional council for the area covered by the district.
[13] RMA, s 77A(2)
[14] RMA, s 87(A)
[15] RMA, s 87(A)

Policy Statement and Regional Coastal Plan (Makgill & Rennie, 2012). This hierarchy of planning frameworks sets the basis for the management of New Zealand's natural and physical coastal resources.

3.5 Resource Management (Aquaculture Moratorium) Amendment Act 2002

During the late 1990's and early 2000's there was a major race to secure marine space for aquaculture activities cause by the 'enabling ethos' of the RMA (Rennie, 2009). By November 2001 there was more than 200 applications nationally, applying for over 50,000 hectares of coastal space for marine farming activities (Shafer, Inglis, & Martin, 2010). The RMA planning regime created an 'enabling ethos' founded on effects-based planning compared to the alternative activities-based planning system of the previous Marine Farming Act, and this led to the rapid development of marine farming (Rennie, 2009). The high demand for coastal consents and the Regional Council's inability to process such great quantities of consents lead to a government implemented moratorium in November 2001 which lasted two years (Shafer, et al, 2010). The moratorium provided the government and local government with the time to reform the current aquaculture legislation and planning surrounding the development of the activity and enabled councils to create an assessment for the marine farming consent applications (Shafer, et al, 2010).

3.6 Foreshore and Seabed Act 2004

During this early 2000's there were heightened tensions surrounding the ownership of the foreshore and seabed (Rennie, et al, 2009). The foreshore and seabed debate which was centred around the ownership and management of the coastal marine area. A key piece of this tension was focused around several hapū from the Top of the South Island trying to obtain a consent to establish marine farms (Ruru, 2004). Without a resource consent the hapū had no right to occupy coastal space for marine farming activities (Ruru, 2004). The hapū had applied for a resource consent, however, were subsequently denied (Ruru, 2004). The hapū then sought Maori customary land under the Te Ture Whenua Māori Act 1993 from the Māori Land Court. This decision was judged in favour of the hapū but the decision was later appealed to the High Court where there was an unanimous decision that the Maori Land Court has the jurisdiction to investigate and determine if the evidence warrants that the foreshore and seabed is Māori Customary Land (Ruru, 2004).

At this stage the government was not prepared to allow the Māori Land Court to determine the status of the foreshore and seabed (Ruru, 2004). This brought about the government-initiated

Foreshore and Seabed Act which was met with great opposition from Maori (Boast & Makgill, 2011). The purpose of the act was to:

> preserve the public foreshore and seabed in perpetuity as the common heritage of all New Zealanders in a way that enables the protection by the Crown of the public foreshore and seabed on behalf of all the people of New Zealand, including the protection of the association of whānau, hapū and iwi with areas of the public foreshore and seabed.

The Foreshore and Seabed Act removed the ability of Maori to obtain the recognition of customary title but allowed existing freehold title to remain (Makgill & Rennie, 2011). The Foreshore and Seabed Act morphed into an ownership debate and whether the Act was fair and equitable, as some parts of the Act were perceived by the United Nations Committee on the Elimination of Racial Discrimination to discriminate against Māori (Bargh, 2006). At the essence of the foreshore and seabed debate was that Māori did not want to limit access to the foreshore and seabed but have the ability to a better opportunity to participate in the commercial use of that space (Ruru, 2004). The Foreshore and Seabed Act was later repealed by the Marine and Coastal (Takutai Moana) Act 2011. In the meantime, in the month following the passing of the Foreshore and Seabed Act the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 was passed.

3.7 Aquaculture Reform (Repeals and Transitional Provisions) Act 2004

Released within months of the Foreshore and Seabed Act, the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 (ARRTPA) had the purpose of repealing the MFA1971 and providing a mechanism for transitioning matters relating to the repeal of part 4A of the Fisheries Act 1983 and provide for the matters relating to the end of the moratorium and including the introduction of Aquaculture Management Areas (ARRTPA, s 3, 2004). This act also amended the Fisheries Act 1996, RMA 1991, Conservation Act 1984, Biosecurity Act 1993 and the Te Ture Whenua Maori Amendment Act while also creating the Commercial Aquaculture Claims Settlement Act 2004 (Cram, Prendergast, Taupo, Phillips & Parson, 2008).

The act deemed leases and licences under the MFA1971 to be coastal permits and to transition the last marine farms into the Resource Management Act regime. The new coastal permits have the same conditions as what was granted under the MFA1971. The deemed coastal permits are to be treated as if they had been granted for a term of 20 years s (10) with the commencement year of 2004. This has led to the 62% of marine farming coastal permits that are coming up for renewal in

2024 as it will be 20 years from the enactment of this legislation. At the time the large number of consents that were rolled over into the RMA did not undergo the scrutiny of the tests under the RMA. So, as at 31 December 2024 there will be large number of consents that need to be renewed that have no information on the existing environment.

The aquaculture reforms also included provision for making Aquaculture Management Areas (AMAs). An AMAs was an area that was zoned specifically for aquaculture activity in the regional coastal plan (Rennie, et al, 2009). These areas are primarily to be used for aquaculture activities. AMAs identified specific zones where aquaculture were most likely to be approved either as controlled or discretionary activities in the coastal environment.[16] Once an area was proposed Fisheries New Zealand had to undertake an assessment of undue adverse effects on customary, commercial and recreational fisheries. All existing marine farms at the time were considered under the reforms as being AMAs due to the introduction of the Act. Until its repeal by the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011, any new marine farming activities had to be located within an AMA. There were two potential ways that this could occur, either through a regional authority-initiated plan change or a private initiated plan change to create AMA's (Rennie, et al, 2009). The AMAs created a zoning approach to the management of natural and physical resources which was seen prior to the RMA. They also included methods of tendering aquaculture space unless it was already specified in a regional coastal plan. The default tendering mechanism for allocating marine farming space is through either a Regional Council-initiated plan change, or individual initiated plan change to allow marine farming activities to occur (Rennie, et al, 2009). This provided Regional Councils with a tool to halt the high demand for the aquaculture space and to allocate the remaining space.

Under section 186GA aquaculture decisions were not to be made in relation to marine permits that were transitioned into the RMA under the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004.[17] This suggests that a number, perhaps all, of affected existing marine farms did not go through aquaculture decision processes. This may raise some concerns when the transitioned consents come up for renewal.

During this time Māori settled their last fisheries claim which resulted in the Māori Commercial Claims Settlement Act 2004. This act sets out the Crown's obligation to ensure that Maori receive

[16] Controlled activity – If an activity is described in the RMA, NES, plan or prosed plan as a controlled activity a resource consent is required. The consenting authority can impose conditions, where the matters are controlled, and the activity must comply with the requirements and conditions of the Act.

[17] Fisheries Act, s 186GA

20% of all existing marine farming space and also requires that Māori to receive 20% of all newly created marine farming space (Banta & Gibbs, 2006). If the marine space is unavailable it is the Crown's responsibility to make the equivalent amount of monetary funds available to Māori. The ARRTPA Act was used as the instrument which allocates the marine space to Māori.

3.8 Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011

In 2011 there were further amendments made to the legislation surrounding the marine farming in New Zealand. This was the third major amendment to the legislation governing the marine farming industry. The purpose of this legislation was to amend the previous Aquaculture Reform (Repeals and Transitional Provisions) Act 2004. The main changes to the legislation was that the legislation removed the requirement for Aquaculture Management Areas, existing marine farms are no longer deemed AMA's, changes were made to the Resource Management Act and the Fisheries Act to streamline the process, aquaculture is no longer able to have a permitted status and the aquaculture activities have a minimum consent activity duration of 20 years (MPI, 2011). This reform was to promote the industry certainty, decrease cost and increase the quality of aquaculture decision making while developing a greater integrated decision-making process (MPI, 2011). This legislation has therefore affected the decision-making process. The next piece of legislation which has shaped the marine farming and the right to a common marine area is the Marine and Coastal (Takutai Moana) Act 2011.

3.9 Marine and Coastal (Takutai Moana) Act 2011

The Marine and Coastal (Takutai Moana) Act 2011 (MCAA) purpose is to repeal the Foreshore and Seabed Act, establish a durable scheme to ensure the legitimate interest of New Zealanders in the marine and coastal areas of New Zealand, recognise the mana tuku iho exercise in the marine coastal area by iwi, and whanau as tangata whenua, provide for the exercise of customary interests in the common marine coastal area and acknowledge the Treaty of Waitangi (te Tiriti o Waitangi).[18]
This act was introduced to repeal the Foreshore and Seabed Act and create a new legislative mechanism that recognises the right for customary fishing and title over the foreshore and seabed (Makgill & Rennie, 2011). The act also had provisions for the preservation of recreational fishing

[18] MCAA, s 4

rights, navigation and other existing rights (Bremer & Glavovic, 2013). This act has several significant sections which relate directly to the RMA and planning which could have implications on the replacement consent process.

The two major components that have major weight in the decision-making process are the Protected Customary Rights (PCR) and the Customary Marine Title (CMT).[19] Protected customary rights is the customary practices that have been exercised since 1840 and continue to be exercised in a particular part of the coastal marine area which is an accordance with tikanga of the applicant group.[20] Customary marine title is allocated to the applicant group which holds the specific area within accordance of tikanga and exclusively occupied since 1840 to the present day or have received it through a customary transfer.[21] These two provisions hold a large degree of decision-making power when it comes to the RMA.

The MCAA does not affect the existing resource consents that were granted before the commencement of the Act.[22] Resource consent applications for the activities that will be undertaken within a protected customary right area shall not be granted by a local authority if the effect is greater than minor on the PCR.[23] The applicant has to gain written approval from the CRP group to enable them to carry out this activity. In terms of carrying on with an existing a marine farm permit this does not limit or effect the reconsenting of existing aquaculture activities consent regardless of the whether there is a change in species farmed or methods, provided that there is no increase in size or change in the location of the activity, or the same or similar character, intensity, and scale that existed before the application.[24] As long as the replacement consent application remains the same as it was within the existing consent and enables the potential change of species and methods the MCAA has set aside the provision for marine farming activities to continue.

The MCAA also includes a RMA permission right that must be carried out under a resource consent. The permission right is for a resource consent that is to be carried out within an CMT area. The CMT has the ability to grant or decline the proposed activity on any grounds to which the RMA permission right must apply.[25] This permission right does not limit the local consenting authority to decline the application or impose conditions on the application.[26]

[19] MCAA, s 51(1) and s 58
[20] MCAA, s 52(1)
[21] MCAA, s 58(1)
[22] MCAA, s 20
[23] MCAA, S 55
[24] MCAA, s 55(3)
[25] MCAA, s 66
[26] MCAA, s 66(5)

The MCAA also provides the ability to produce a planning document.[27] This planning document must be prepared by a marine title group in accordance with Tikanga Māori. The purpose of this planning document is to identify relevant issues to the regulation and management of the customary marine title group, to set regulation and management objectives and set out set out polices for achieving these. [28] The planning document has no effect on the relevant authorities until it is lodged with the appropriate regional authority[29]. Once the planning document is lodged it then has statutory force.[30] This provides it with statutory functions with the District or Region of where it is located, and local authorities must take it into account when making designs under the LGA 2002 in relation to the CMT[31]. This is further bolstered by s 93(6) which ensures that a Regional Council must initiate a process to determine whether it needs to alter relevant regional documents and to what extent that any alteration would achieve the purpose of the RMA in which the CMT applies. This provision of the act allows for Māori to have a greater impact on the process of consent decisions but also the regional policy statements and regional plans. This gives a greater input on what activities will be allowed to occur within a CMT. This could have a potential influence on replacement consents for marine farming activities and proposed new coastal permits.

3.10 The Resource Consent Application Process and Replacement Consent Process

It is now well established that the renewal of resource consents is going to be a defining issue for the mussel farming industry and potentially the way that RMA may be administered. The provisions implemented under the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 transitioned a large number of leases and licences into the RMA for a period of 20 years. The transitioned leases and licences are coming to the end of their consented time and are close to their expiry date and will need to be replaced by 31 December 2024 if the activity is to continue on the existing sites. The RMA does not grant a right for renewal of the consents so there is some uncertainty surrounding the renewal process. The RMA replacement consent progresses through the same process as a new consent. However, there is a distinct timeframe that applications have to be lodged by set out under part 7A subpart 3 (Table, 1) and there are provisions to strengthen the rights of the existing consent holder.

[27] MCAA, s 59
[28] MCAA, s 85(2)
[29] MCAA, s 86(1)
[30] MCAA, s 88(1)
[31] MCAA, s 88(2)

Table 1: Table Representing the Replacement Consent Timeline.

Order in which Applications by Existing Consent Holders are Processed		
Timeline	**Existing Consent Holder (s 165ZH)**	**New Applicant (s 165ZI)**
Prior to 6 Months	Application made under s 165ZH can be made prior to 6 months and will be determined before any other application while enabling the marine farmer to continue operating under the consenting authority's discretion.	Application made under 165ZI by another applicant that is not the existing coastal permit holder. Processing will be held until 3 months before the expire as long as there is no application under s165zh which take priority.
6 Months	Application made under s 165ZH can be made between 6 and 3 months before the expiry of the consent and must be determined before any other application while enabling the marine farmer to continue operating under the consenting authority's discretion.	
3 Months to Expiry Date	No special provisions.	

The RMA provides the mechanism for the renewal process of the consents under section s 165ZG. Section 165ZH applies to processing applications for existing permit holders sets out the premise for existing consent holders of coastal permits. While the process is for existing permit holders the decision-making process requires a new application therefore it is not a 'renewal' but a 'replacement' consent for the existing marine farming activity.

The new application for a coastal permit must be for the occupation of some or all of the same space, the same or another aquaculture activity and accompanied by other applications of coastal permits related to carrying out the aquaculture activity.[32] This application must be made to the appropriate consenting authority. The consenting authority has the discretion if the application is made prior to 6 months of the expiring consent or within the time period of 6 months to 3 months of the existing consent expiring to allow the holder to continue operating.[33] The application must be processed and

[32] RMA, s 165ZH(1)
[33] RMA, s 165ZH(1)(d)

determined before the any other application can be made for the same space and no other application can be accepted before the determination of the application. The existing permit holder can continue to operate until the new coastal permit has been granted or denied and all appeals determined.

The following Section 165ZI applies if an application is made for an existing space of coastal permit and is made by not the existing permit holder.[34] If a person who is not the existing permit holder applies for an existing space the consenting authority has to wait until 3 months prior to the expiring of the consent. During this time the consenting authority must not accept other applications from anyone other than the existing consent holder. The consenting authority must notify the existing permit holder of the application and the holder can make an application of their own.[35] The existing consent holder's application must be processed first in accordance with s 165ZH. If the existing consent holder does not make an application prior to the three months before the expiration of the consent the new applicant's application is processed first. This can be processed earlier if the existing consent holder notifies the consenting authority in writing and does not propose to reapply for the consent.

When considering the application under s 165ZH the consenting authority must consider all relevant information available including monitoring data in relation to the existing coastal permit. In relation to s 165ZH and s165ZI the consenting authority must not only consider the relevant matters under the Act, but also consider the applicants conduct with respect to the compliance to the Regional Coastal Plans, and the consent conditions on the previous existing consent. In making an assessment under s 165ZJ(1)(a)(b) the consenting authority must consider any historical enforcement action under part 12 of the Act consider:

(a) the number of any breaches that have occurred; and
(b) the seriousness of the breach; and
(c) how recently the breach occurred; and
(d) the subsequent behaviour of the applicant after enforcement action.

Once this process is completed in accordance with new consent application process, the consent will either be granted or denied. Despite the security of the marine farm permits they are only consented to occupy space for a limited time period and not granted in perpetuity. There is an increasing concern as to how the coastal permits will be renewed under the RMA. Between 2017 and 2025, 64%

[34] RMA, s165ZI
[35] RMA, s 165ZH(1)(c)

of marine farm consents will have to be renewed which is estimated to cost $40 to $80 million (MFE & MPI, 2017).

The application process of the replacement consent is guided under Part 6 of the Resource Management Act. Resource consents are created to help achieve the purpose of the RMA and are guided by the hierarchy of planning documents (Casey, 2015). Resource consents are granted by the local authorities who can either grant or decline resource consents, set conditions and monitor the resource consents. Subsequently due to the fact that fisheries have been left out of the RMA a marine farm application has to pass an 'Undue Adverse Effects Assessment' from Fisheries New Zealand administered by the MPI. This outcome of an undue adverse effect's assessment is called an 'Aquaculture Decision' which is made under the Fisheries Act 1996. The Resource Management Act consenting process and the aquaculture decision process under the Fisheries Act are intertwined represented in figure 3.

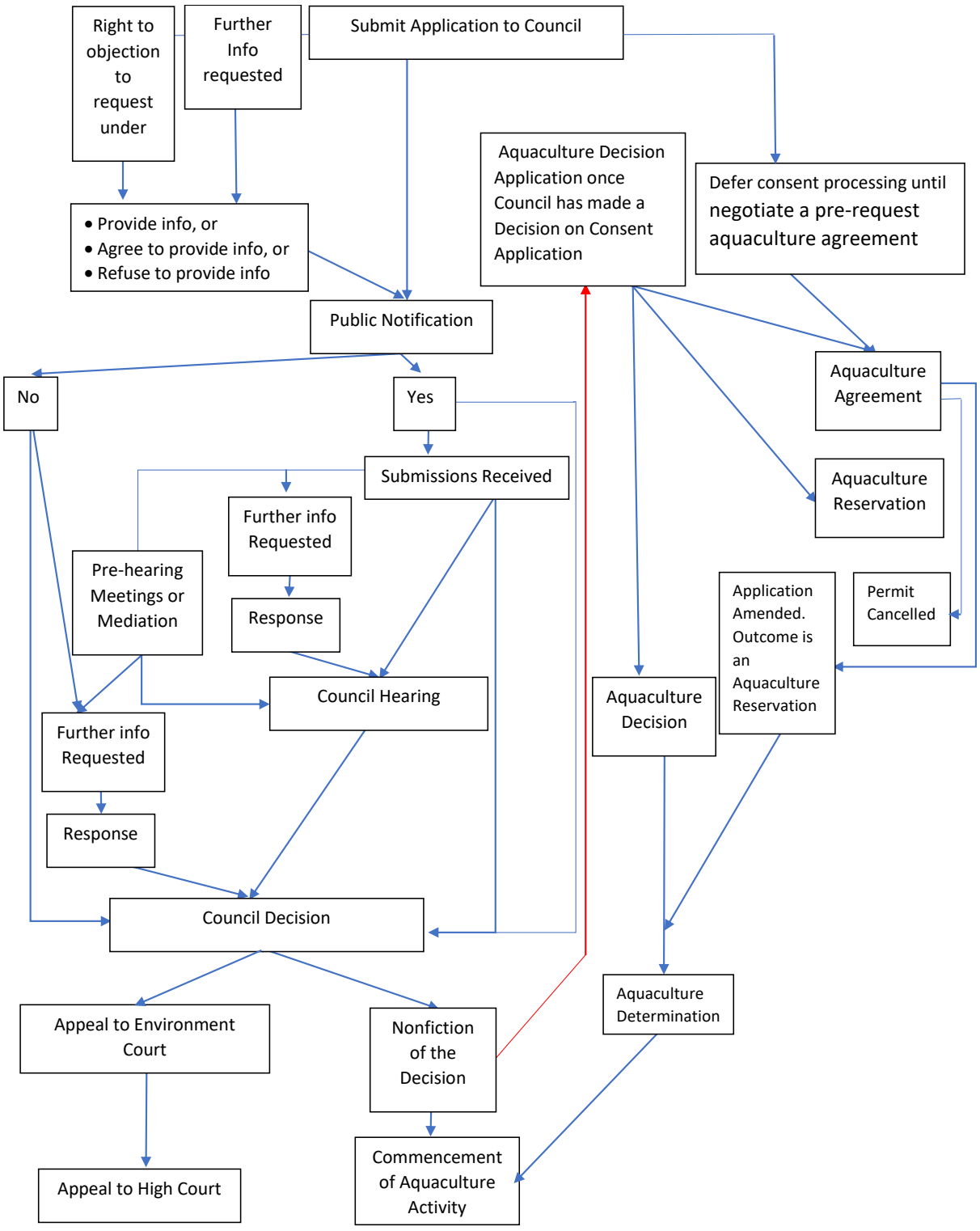

Figure 3: Flow Diagram of the Dual Permitting System under the RMA and Fisheries Act.

Section 88 of the RMA deals specifically with a resource consent application. Each application must include an Assessment of Environmental Effects (AEE) which is outlined under Schedule 4.[36] Schedule four sets out what is required for an AEE. This includes a description of the activity, site, other resource consents, it also includes assessment against the matters in Part 2 and an assessment of any

[36] RMA, s 88(2)(b) and sch 4

relevant provisions in a NES, other regulations, NPS, NZCPS, RPS or a Regional Plan. These must include an assessment against relevant objectives, policy, or rules and requirements of the planning documents.[37] Regional Coastal Plans dictate what activity class a proposed activity will be. These vary between region to region depending on the receiving environment. The application for the replacement consent must be treated as a new application and assessed as if the activity wasn't there.

During the application process for marine farming activities the applicant can request that the consenting authority defer determining the application while the applicant can negotiate a pre-request aquaculture agreement under section 186ZM of the Fisheries Act 1996.[38] This then places the application on hold for 80 working days after the application was lodged to allow the applicant to decide if they wish to continue.[39] Within the application process under the RMA, a copy of the application to the local authority must be submitted to Maritime New Zealand who then are responsible for reporting on any navigational-related matters. This report will consider the relevant application and include any conditions that Maritime New Zealand considers should be included on the consent. [40] This report should be completed and returned to the council within 15 working days, failure to return the report to the local authority is an indication that Maritime New Zealand has nothing to report on.[41]

If the initial application is of insufficient quality the consenting authority may return the application with five working days or the consenting authority may request further information under s 92 of the RMA. The applicant has the right to object to the return of the application under s 357.[42]

The RMA includes three potential pathways which can be taken for a resource consent. These are public notification, limited notification and non-notification. A decision on this must be made on the notification route within 10 working days if it is a fast track application or 20 working days in the case of any other application.[43] Public notification is required if the proposed activity will have more than minor effects on the environment under s 95(8)(b). The option to provide an application with limited public notification is based on whether the proposed activity will have less than minor effects on the environment but the authority will have to determine whether there is certain affected groups or affected parsons such as a Protected Customary Group, Customary Marine Title Group, or an

[37] RMA, sch 4, cl 2(1)(2)
[38] RMA, s 88F(1)(b)
[39] RMA, s 88F(2)
[40] RMA, 89A(3)
[41] RMA, 89A(4)
[42] RMA, s 88(3A)(5)
[43] RMA, s 95

affected person who is on the boundary with the activity or an owner of an allotment with an infringed boundary that must be notified.[44] If a the consent authority deems the application to be publicly notified or the an affected person under the limited notification process. They have the ability to make a submission on the proposed activity under s 96. If the application is notified a copy must be sent to the Fisheries New Zealand as soon as reasonably practicable.[45] The submissions from the public or an affected person must either state that they support, oppose or are neutral on the proposed activity.[46] If the application does not require either of these notifications processes the application is then non-notified, and the application is processed as normal without any public input.

If the application is notified and the consenting authority believes it is necessary to hold a hearing or a submitter has requested to be heard in a hearing.[47] The consenting authority may hold a pre-hearing which may require the applicant and any person who submitted to attended (Casey, 2015). This then may lead to a mediation process if all parties that attended are in agreement (Casey, 2015).

At the hearing the consent authority must provide a brief of evidence under s 42A of the RMA to the applicant and anybody who made a submission and wishes to be heard at least 15 days before the hearing.[48] At the hearing the applicant and the submitter are allowed to appear and call on evidence but there is no right to conduct cross examination (Casey, 2015). A decision on the application will then be made in the following 15 working days.

The following decision-making process on an application is set out under s 104 – 104D. When making a decision on an application the consenting authority must have regard to Part 2 of the Act with matters set out in Section 6-8 important (Casey, 2015). The particular matter which the consenting authority must have regard to when making a decision on s 104(1) are any actual or potential effects on the environment when allowing or granting consent for the activity or, any relevant planning legislation on a national regional scale, any regional plans or proposed regional plans and any other matters that the consenting authority deems relevant or necessary to determine the application.[49]

Under Section 104(1)(a) when assessing any actual and potential effects on the environment by allowing the activity the local authorities decision-making process is guided by the Port Gore Marine Farms Ltd v Marlborough District Council [2012] NZEnvC 72. The guidance provided by this case is in

[44] RMA, s 95B
[45] RMA, s 107F(3)(c)
[46] RMA, s 96(7)
[47] RMA, s 100
[48] RMA, s 103B(2)
[49] RMA, s 104(1)

relation to the existing activity. For the purpose of Section 104(1)(a) the environment needs to be considered as if the 'marine farms are not actually in it'.[50] This approach is taken because of the fact that it is a 'logical consequence' of the expiry of the marine farms and if this approach was not taken 'it would undermine any persons claims to be adversely affected'.[51] This means that when an application is made for replacing an existing marine farm the decision makers must consider it as if the existing structures are not part of the environment. This will become problematic when the marine farms that were transitioned into the RMA under the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 are due for assessment for the purpose of an application and there is no environmental data on what the existing environment was like before the mussel farms were developed.

When considering the application, the decision-maker also has to take into account the value of the investment if an application is made under s 124 or 165ZH(1)(c).[52] In the same case the 'existing investment' was referred to or may include the value of the plant and lines on site, the value of the current crop, the cost of the renewal application, a capitalisation of the likely returns, the net social benefit and the employment opportunities.[53] The court found that the consenting authority did not need to consider the application cost of the renewal as it was considered to be a 'sunk cost'.[54]
In a recent case Clearwater Mussels Limited v Marlborough District Council [2019] NZHC 961 found that the current investment of Clear Water Mussels Limited was the:

> investment in the farms was relatively modest, it would be wrong to be dismissive of the investment or loss of revenue from a rejection of the applications. Nevertheless, there was nothing in the Act, Coastal Policy Statement or Sounds Plan that directed the Court to protect against a loss of investment that might be suffered by Clearwater.

The current investment is acknowledged by the decision makers but given little weight in the overall outcome of the decision. This mechanism under s 104 is meant to recognise the investment and potentially give it more weighting. The court found "If the economic impact was larger, on a Regional or National scale, it said, it might have been different".[55] The court however did provide reasonable decommissioning arrangements.

[50] Port Gore Marine Farms v Marlborough District Council [2012] NZEnvC 72 in par [140]
[51] Port Gore Marine Farms v Marlborough District Council [2012] NZEnvC 72 in par [140]
[52] RMA, s 104(2A)
[53] Port Gore Marine Farms v Marlborough District Council [2012] NZEnvC 72 in par [140]
[54] Port Gore Marine Farms v Marlborough District Council [2012] NZEnvC 72 in par [140]
[55] Clearwater Mussels Limited v Marlborough District Council [2019] NZHC 961 in par [42]

Under s 108 of the RMA the local consenting authority has the ability to impose conditions on what the authority thinks is appropriate to manage the activity. A resource consent may include a number of conditions that need to be implemented. In terms of a coastal permit to occupy there needs to be a condition detailing the extent of the exclusion of other persons and specifying any coastal occupation charge.[56] The Minister of Fisheries also has the ability to impose conditions on the resource consent.

Under section 120 of the RMA it provides the right for the applicant or the consent holder, any person who made a submission or the Minister of Conservation on a coastal permit to appeal to the Environment Court.[57] The decision made under the provision of the Environment Court can then be appealed to the high court but only on points of law under s 287of the RMA.

The Resource Management Act has undergone a number of key changes since its implementation in 1991. The relevant amendments to this research are the 2009 Resource Management (Simplifying and Streamlining) Amendment Act. The purpose of these amendments was to improve the resource consenting process through making changes to sections surrounding the public notification and decision-making process (MfE, 2009).

Once a final decision has been made on an aquaculture activity the consent authority must forward a copy of the application to the Ministry of Fisheries as soon as reasonably practicable along with any information that was contained within the application.[58] Then if the decision is to grant under s 107F the consenting authority must also send a copy to the Ministry of Fisheries and then the activity can commence under s 116A if it is in accordance with this section.[59] The applicant looking to register the pre-request aquaculture agreement with the Chief Executive of Ministry of Fisheries for registration, must be done at least 20 working days before lodging the agreement and give notice to the quota owner to start the pre-request aquaculture agreement, and notify in the local paper of where the coastal permit relates to.[60]

[56] RMA, s 108(2)(h)
[57] RMA, s 120(1).
[58] RMA, s120(b)
[59] RMA, 116A
[60] Fisheries Act, s 186ZM(4)

3.11 Undue Adverse Effect Assessment

The aquaculture decision process has multiple different levels which is initiated by the RMA. Under section 88F the applicant can pre-request an aquaculture agreement or can be made before the application is notified under section 114. This pre-request agreement must relate to 1 or more stocks under the QMS, contain consents from 75% of the registered quota owners regarding the particular stock and that the registered quota owners had reasonable opportunity to consider whether to consent the application.[61] If the pre-request agreement is lodged under section 1865ZH and complies with all the sub parts the Chief Executive of the Ministry of Fisheries Chief Executive must not have regard to any undue adverse effects on commercial quota stocks covered by the pre-request agreement.[62] The pre-request agreement then has to follow s186ZH to 186ZK which is explained in detail further on.

If a pre-request agreement is not reached the application will have to go through the undue adverse effects test. The undue adverse effect test is also required under s 114 of the RMA. The test conditions are set out under s 186GB which outlines the matters that need to be considered before an aquaculture decision is made. These are the location of the coastal permit in relation to where which fishing activity is carried out, the likely effect on the fishing activity and the fishery, the degree of exclusion that aquaculture activities will cause on fisheries, what fisheries are affected, the extent of which the coastal permit will increase fishing costs and the cumulative effect on fishing.[63]

If the Chief Executive is satisfied that the aquaculture activities authorised by the coastal permit will not have an undue adverse effect on fishing, he or she will make a determination of the application and the permit will be confirmed.[64] The Chief Executive can specify any condition on the coastal permit that is relation to the decision. If the Chief Executive is not satisfied that the aquaculture activity authorised by the coastal permit will not have an undue adverse effect on fishing activity, then he will require an aquaculture reservation.[65] This means the application has to go through a process which is a different decision-making process under an aquaculture decision process. The decision of a reservation based on the effect of customary, recreational, or commercial fishing, or a combination of them or to commercial fishing stocks, quotas areas and other matters to be included.[66]

[61] Fisheries Act, s 186ZM
[62] Fisheries Act, s 186GB
[63] Fisheries Act, s 186GB(1)
[64] Fisheries Act, s 186H(3)
[65] Fisheries Act, s 186H(4)
[66] Fisheries Act, s 186H(4)(a)(b)(c)

The following steps to the decision-making process are outlined under the Fisheries Act from Section 186ZD to 1867. This process involves a number of steps which the applicant has to go through to have the reservation lifted to enable them to continue and have their aquaculture decision granted. Once this is done the Chief Executive must notify the consenting authority under s186H of the Fisheries Act and then the coastal permit activity can commence under section 116A of the Resource Management Act. At the end of the dual permitting process as long as both an aquaculture decision and the appropriate resource consent From the regional or territorial authority is granted. The activity is known as resource consent as under RMA. An aquaculture decision has to be made before the commencement of any aquaculture activity can occur in the coastal marine area.

The replacement consent process and historical policy framework that has been outlined throughout this process has made it clear that the method of replacing a marine farm consent is complex and not an obvious process with multiple critical steps that need to be taken into account. For a person who has no professional coastal planning background the task of replacing a marine farm consent may be outside of their current skill set. This therefore means the role of professional coastal planners and private consultants become an integral part of the system when replacing marine farm consents.

Due to the complex and not obvious nature of the replacement of marine farm consents despite there being a clear process set out under the RMA and Fisheries Act it is not yet certain that all the consents will be renewed as there is no 'right for renewal' under the RMA (MFE & MPI, 2017). When a coastal permit expires there must be a new application made to the local authority (MFE & MPI, 2017). Despite searches of multiple databases, with the exception of Rennie (2010), I was unable to uncover any previous research on the decision-making process for the renewal of resource consents under the RMA. Rennie (2010) focused on the renewal of existing coastal permits for marine farms located in Wainui Bay in the Tasman Region and identified the transitional phase of renewal of marine farms as an area of tension, significantly surrounding the nature of the role played by the local community.

3.12 National Environmental Standard for Marine Aquaculture

The latest proposed changes for aquaculture have come in the form of a 'Proposed National Environmental Standard for Marine Aquaculture' (NES-MA). The NES-MA has recognised the

upcoming issue of uncertainty relating to the renewal of the marine farming consents and the potential implications that it will have on the marine farming and aquaculture industry. The focus of the proposed NES-MA is:

> providing nationally consistent rules for coastal plans for the management of existing marine farms (including simpler and more certain provisions for replacement consents for existing marine farms, and for change of species); a nationally consistent approach to the management of biosecurity risks, co-ordinated with requirements under the Biosecurity Act 1993.

The aim of the NES-MA is to provide for greater 'certainty' for investment with the aquaculture industry while supporting 'better' environmental outcomes. (MfE & MPI, 2017). Currently under the RMA there is no right for renewal of consents which is where the uncertainty lies.
The preferred by the Government was the National Environmental Standard (MFE & MPI, 2017). The NES-MA is looking to change the replacement consent of marine farms activity status in Regional Coastal Plans. Applications in areas that are deemed appropriate water space for aquaculture, was proposed to have a restricted restricted-discretionary activity status provided they meet prescribed criteria (MFE, & MPI, 2017). This is very similar to the AMA provisions that used to exist, but without the controlled activity status and consequently not providing as much certainty. Replacement consents for existing marine farms that are within areas identified as inappropriate for existing aquaculture in regional coastal plans would have a discretionary activity status (MFE, & MPI, 2017). The NES-MA would prescribe clear matters of discretion which should decrease the complex nature of the replacement of marine farm consents.

The NES-MA proposed to change the activity status of marine farming consents within a number of regions and therefore will potentially alter a number of current regional plans. This may undermine the regional coastal plans' public participation process through which these plans were developed. The NES-MA will also change the notification process, enable realignments of marine farms, allow more lenient regional coastal plans and require forms of pre application meetings with tangata whenua (MFE, & MPI, 2017).

The proposed NES-MA has been out for public consultation and the decision in July 2019 was a Cabinet policy directing drafting of the proposed National Environmental approved and consequently the NES itself is now expected to be finalised in 2020. The proposed NES-MA would have major implications on the current decision-making consent renewal process as noted above.

3.13 Summary

The legislative landscape of marine farming in New Zealand is complex and has undergone major change throughout time. This has been relativity turbulent with multiple different acts, transitions and repeals being implemented to increase efficiencies, business security and certainty for the mussel farming sector while also trying to promote better environmental outcomes. There are multiple critical tests that the marine farm applications have to meet under both the Resource Management Act and the Fisheries Act to occupy and use coastal marine space. This has created a dual permitting system coinciding with case law which also guides the way that decision makers interpret the rules set out under coastal plans and the NZCPS. The current planning framework for decision makers is a complex system which requires a great deal of knowledge, experience within the industry and regulators to understand.

Chapter 4

Methods

This chapter will outline the qualitative methods used while conducting this research on the decision-making process behind the replacement marine farming consents while also providing a description of the participants' backgrounds. The chapter will also provide the rationale for why a case study approach was used, the application of non-probability sampling, the selection of participants and why semi-structured interviews have been selected for this research.

4.1 Case Study

A case study approach was utilised as these have been identified (Yin, 2012) as facilitating an investigation into a current phenomenon in depth and in a real-world context. The case study's core elements in terms of research are focusing on specific cases which are naturally occurring. A restricted field of research facilitates an in-depth analysis of a particular case by using multiple and various sources of information (Layder, 2018). A case study incorporates a holistic perspective when examining real-life scenarios (Layder, 2018). The aim of the case study is to generate an understanding into the particular nature of a case through people who have had first-hand real-world experience (Layder, 2018).

The case study should be bounded, according to Yin (2012), in that it should be restricted to the time period covered, relevant social groups involved and the relevant geographical location. The adoption of mussel farming as a case study was seen as a robust pathway for directing the research and on gaining an understanding of real-world context through the identification of particular groups that are affected by the current decision-making process under New Zealand marine farm planning legislation.

The case study was used to capture the complexities of the New Zealand legislative system and first-hand accounts of individuals that were part of the decision-making process administrated through current planning legislation. The analysis of legislation, policies, plans, case law, submissions and resource consents provided relevant sources of information to address this research. The initial context of the case study was framed by the current legislation around marine farming within New

Zealand. At that time in 2019 there had been little literature surrounding the marine farm renewal process or any resource consent replacement. There was, however, activity surrounding the National Environmental Standard for Marine Aquaculture and discussion and potential of changes to the marine farm consent replacements process. From examining the Ministry for Environment and Ministry of Fisheries the there had seemed to be an inaction in the development of the NES-MA, possibly due to the change of government in the general election of 2017.

The original aim of this research was to create a framework to potentially improve the current decision-making process for the replacement of marine farm consents. However, on the 29th of July 2019, part way through my data collection, the government released the Cabinet paper outlining the "National Environmental Standard for Marine Aquaculture – policy approval and agreements to draft regulations". The release of the draft regulations essentially validated the original aim of this research but necessitated a methodological change and outcome change. As part of National Environmental Standard for Marine Aquaculture – policy approval and agreements to draft regulations it received a 107 Submission which were examined as part of this research. This provided a wider context to this case study which became valuable within the results and discussion section.

To ensure that the research that was completed up until this point would still be useful, the original goal was amended. Instead of creating a framework to potentially improve the decision-making process for replacement marine farm consents, from the data that a comparison, was undertaken between what was revealed through the interview process as being desirable and what the government released in the draft regulations. The effects of the proposed draft regulation is therefore explored through this case study.

4.2 Semi-Structured Interviews

A semi-structured interview approach was chosen as a means of uncovering and identifying the attitudes and perceptions of different stakeholders within the replacement of decision-making process for resource consents. Semi-structured interviews include a key set of questions that are designed in an open-ended format, enabling wider scope for interviewee response than closed-ended questions. The major advantage of a semi-structured approach is allowing the researcher to gain a more in-depth understanding of the participant's perspective (Mills & Birks, 2015). The key elements for a successful semi-structured interview are that the interview is conducted over a longer period of time which involves face to face interviews with flexibility to follow interesting avenues as they arise (Mutch, 2005). The benefits of semi-structured interviews are a first-hand account from

participants that deal with the particular phenomenon which can provide valuable data. The open-ended questions enable the participant to provide detailed content to their answers which will help contextualise the research.

Figure 4: Map of Case Study Regions where interviews took place.

The semi-structured interviews took place during the months of June and July of 2019 in a number of locations in the Tasman, Marlborough and Canterbury Regions (Figure 4). These interviews predominantly took place at the participants' location of employment. There was one case where an interview took place in a neutral setting of a café. All of the interviews were between 25 minutes to 70 minutes long. Phone calls and skype calls were used to contact participants unable to meet face to face. These acted as effective forms of communication; however, the phone calls didn't enable me to pick up on facial expressions or body language which provide extra detail on the participant's response.

The participants received a copy of the questions a week in advance of the interviews. Before the commencement of an interview the participant signed a consent, form which provided the participants with the option to either be digitally recorded or object to being recorded (but agreed to notes being taken). The consent form also outlined that the participant understood the description of the research and agreed to partake in the research. The consent form reinforced that the

participant's identity would remain anonymous and provided them with 15 days to withdraw from the research.

The interview questions (Appendix A) that were sent to the participant prior to the interview contained seven general questions surrounding the decision-making process of the replacement of marine farm consents. During the interviews the participants were asked a number of more specific questions in regard to the replacement consent process. One important consideration that was taken with the design of the questions was to ensure that the questions were not leading. The questions for the research were designed specifically to gain a deeper understanding of the decision-making process for replacement marine farm consents. The questions were relevant to all of the participants' experience and knowledge of the current decision-making consent process. The questions were based on the participant's approach to replacement consents, what legislation, plans and polices they used, their concerns about the process, current views and suggested improvements to the replacement consent decision making process.

Participants' knowledge varied in this area as some had a stronger understanding of New Zealand's coastal marine area planning through the legislation, plans, rules and case law that has been developed in response to the replacement of mussel's farm consent. Others had a strong understanding of the application process for the replacement marine farm consents. All participants that were interviewed held strong views and attitudes on how the resource allocation of the coastal marine area should be managed.

All of the participants opted to be recorded with the exception of one. This meant that the majority of interviews were subject to further analysis. The interviews were initially analysed using repeated listening to become familiar with the interviewee responses. Once this was conducted the important responses of each interview were transcribed enabling further in-depth analysis. The method of thematic analysis was used by the researcher. This approach required the analyst to take an active part in choosing and categorising the data into themes (O'Reilly & Kiyimba, 2015). The data was then categorised into four main themes and further sub themes that are outlined in chapter 5 of the research. The use of direct quotes forms the research elements that were of direct relevance and these were used to emphasise the importance of each theme.

4.3 Research Participants

Overall there were 17 participants that were deliberately selected for this research. The participants were either marine farmers, planners for the local territorial authority, private consultants, an environmental group member, academics, industry bodies and two participants from a government ministry.

The New Zealand marine farming sector and associated persons that work in this field is relatively large and expanding, however the industry still has a high degree of interconnected associations. The potential that the participants may know each other and what is said in the interview process may carry a potential risk to the development of legislation, plans and business. One participant that was contacted to participate within the research declined to participate due to the sensitiveness of his position in an ongoing aquaculture planning process. This highlighted the sensitivity of the participants therefore the need for the anonymity of the participants to be preserved.

Although the anonymity of the participants needs to be preserved for the purpose of the results section table 2 outlines the position that the participants held. This provides the reader with ability to gauge the perspective of the respondent and provided the reader with a better understanding of the results section while maintain the anonymity of the participants. The following subsections describe the different types of participants that were interviewed for the purpose of this research.

Table 2: Coding for the participants position held.

Participants Position	
Position	**Respondent**
Marine Farmers	A
	B
	C
	D
	E
Academics	F
National Bodies	G
	H
Ministries	I
	J
Public Planners	L
	M
	N
	P
Consultants	Q
	R
	S

Nearly all participants that were contacted, agreed to participate in the research. There were a select few that either did not reply or were busy with other commitments. All participants held the required knowledge and expertise to add substance to this research. When selecting the participants, it was a balancing process between the three predominant groups of marine farmers, resource management planners/consultants, industry and government ministries to gain a full overview of the perceptions and opinions relating to the replacement consents process. There was the identification of participants through their work in the replacement of marine farm consents which was found through public information on the council websites. The participants were purposely (following Creswell, 2014) selected to ensure that the obtained knowledge would shed light on the current research question. The participants within the research all held a number of years' experience within the field with one in particular originating back to the 1980's. These provided a direct link to participants that had recently been through the replacement consent process.

4.3.1 Marine Farmers

The marine farming participants was split between owner operated marine farms and corporate ownership. These provided different perspectives on the replacement consent process as they held different knowledge skill sets, accessibility to monetary funding and political influence. All of the interviews had a long association with the marine farming industry except one who was the operations manager for a company. Having the different perspectives from the marine farms operations and cooperate ownership was invaluable for the research. The marine farmers gave a clear indication to the risk of business that the decision making on replacement resource consents currently creates in their view.

4.3.2 Public Planners and Consultants

The planners and consultants that were interviewed in this research were able to add a different perspective to the research. All the participants that were from a consulting and private planning role were well versed in the coastal marine area planning issues. They provided a well-informed perspective of the current legislative and planning mechanisms within the decision-making process for the replacement consents. The planners and consultants provided a holistic view of the current decision-making process surrounding the replacement of marine farming consents and provided useful critiques.

4.3.3 Ministries, Academics and National Bodies

Within the research there were several Ministries, National-bodies and academics that were interviewed as part of this research. These participants all had a wealth of experience within the marine farming industry and the coastal marine area. These interviews provided a wide range of perspectives on the replacement consent process. These interviews provide a greater national viewpoint in the management and effect that the decision-making process has on the replacement of resource consents. Their wider knowledge of the coastal marine area planning subject facilitated a critical analysis of the decision-making process which complimented the marine farmers, planners and consultants' perspectives.

4.4 Summary

This chapter has described the methods used in this research and it has outlined the rationale for the research. A case study approach restricted to the mussel farming industry was utilised to make a detailed assessment of the replacement of consents. The analysis of literature, legislation, plans, policy, case law, submissions and semi-structured interviews generated a greater understanding of the implications of the process. The semi-structured interviews were conducted with a range of participants that are key contributors in the replacement of marine farm consents process, However, due to the introduction of the National Environmental Standard for Marine Aquaculture during the field data collection, a methodological change was needed to ensure that the substantial research that had been completed prior to the release of the NES-MA was still useful. The chapter that follows moves on to consider the outcomes of these research methods and will provide an analysis of themes that surfaced.

Chapter 5

Results

This chapter sets out the results and findings from the interviews conducted in this research. As suggested in the legislation analysis section, there are fundamental gaps in the literature surrounding resource consent replacement not only for mussel farm coastal permits to occupy public space but a wider lack of information regarding all resource consent replacement. The research aim is to develop a broader understanding and to develop a body of literature to decrease some important gaps in this research field.

This chapter starts by describing the main background issues that were raised and the themes that presented themselves. There were several different perspectives, so each theme has alternative views which has created a greater degree of substance to the results and findings. The key areas that were questioned were the current planning framework in place, the effect on the decision-making process and a broader understanding of the allocation of the public marine space.

5.1 General Replacement Consent Considerations

The majority of all participants interviewed believed section 165ZH (1)(d) which enable the applicant to continue to operate while their consent is being processed is a fundamentally important and useful subsection to have.[67] Respondent B goes as far to say, "I think it is the only mechanism that you can really have". This provision has the important role in providing for business security and certainty. A larger number of marine farmers indicated by respondent Q that were planning on and applying well in advance of this six-month timeframe.

There were two predominant reasons why participants applied for their replacement consent early. The first was the time it takes for an application to be processed once it has been submitted to the consenting authority. The council may not be able to provide a decision within the time frame before the consent expires so with the timeframe set out under section 165ZH (1)(d) provides business certainty. The second reason is especially relevant within the Marlborough Region where the planning framework against which applications will be assessed is anticipated to change with the

[67] This section is for processing applications for existing permit holders.

implementation of the National Environmental Standard for Marine Aquaculture and the new aquaculture provisions in the MEP set to be released in their plan review. This uncertainty is amplified by the issue of the large number of consents coming up for renewal in 2024. Some applicants who hold marine farms with a controlled activity status are choosing to replace their current consents early to ensure that they gain a "controlled activity" status, before the NES-MA comes and or the Regional Costal Plan changes. This is because of the uncertainty new planning provisions. While contrary to that, some are potentially holding off renewing their consents early to see more clearly what the new planning framework will bring.

Following the provisions after s 165ZH is that the authority granting consents when considering applications of existing aquaculture activities must not only consider the relevant matters under the act but also the applicants' available environmental monitoring data in relation to compliance with the relevant coastal plan and consent conditions under s 16ZHJ (1AA) (1). It was observed that throughout the research the monitoring data and the environmental effect from marine farms were rarely mentioned in detail. With all of the mussel farmers and a majority of the public planners and consultants did not view the activity as having extensive or negative effects on the environment. They all considered marine farming to have a relatively minor effect on the environment with respondent S saying in "my own view of mussel farming in particular that, it is pretty environmental benign".

The predominant effect of the marine farming activity that was raised is the visual impact in areas of "Outstanding Natural Character", preservation of natural character and protection of significant indigenous vegetation and significant habitats of indigenous fauna.

One participant S stated that "monitoring data that shows the effect of that farm are the best environmental data for reconsenting". The monitoring data is an important part of the decision-making process. Following on from this participant Q said:

> "So, what we are doing is collecting a whole lot of scientific information about the ecological effects of what we do because we need to know that. So, a lot of research is being happening in that area, so when some says something outrageous, we can say that's not what the scientists is saying, that is not right."

This highlights the importance of environmental monitoring data within the process of the replacement of marine farming replacement consents. An issue that was identified by a small number of participants is that generally the effects of mussel farming is well known but it is the

cumulative impact of marine farming that has little environmental data or science surrounding it. These participants don't believe it is fair that the burden of monitoring cumulative effects should be placed solely on an individual marine farmer but should be addressed collectively "they should all be contributing to cumulative effects monitoring as they are through the marine farming association". An example of this is surrounding the King Shag as there has been case law set dealing with the replacement of a marine farm consent in the on the effect of King Shag and among others (see Clearwater Mussels Limited v Marlborough District Council [2019] NZHC 961). This was an influence for the Marine Farming Association to start carrying out monitoring of King Shag along with the Marlborough District Council, the Department of Conservation and others.

Another provision that needs to be taken into consideration is the compliance enforcement records of marine farmers. Mussel farmers, public planners and consultants responded on the whole said that the compliance and enforcement records had little influence on the outcome of the application. Many of the participants said that compliance was something that was considered in the decision-making process but in reality, had very little effect on the outcome of the application.

One participant said that it was something that they were "currently grappling with". The weight that is given to the compliance record is very limited. The majority of mussel farmers interviewed stated that compliance issues are rare and not a significant risk to their operation. The predominant issues tend to surround navigational lighting which is stipulated on the consent conditions however doesn't seem to "pose an issue" said one farmer. One potential way that this could affect the decision-making process is through the ability to impose conditions surrounding the areas of compliance on the new consent.

When looking into a recently renewed application on the Banks Peninsula in the Canterbury Region there were a small number of amendments made surrounding one compliance issue relating to non-organic material washing up on a remote bay. The imposition of a specific condition for the applicant to regularly remove the non-organic compounds and maintain a record of it.[68] There was also added conditions around some parameters of the monitoring data to make it a more robust and comprehensive monitoring process for the marine farm.

Under section s 124(2A) of the RMA it stipulates that an application for a renewal of consent "the consenting authority must have regard to the value of investment of the existing consent holder".

[68] Pigeon Bay Aquaculture Limited Report and Decision of Hearing Commissioner [2019] in par [207]

The participants' response when asked about the current investment was that it was something that they put in the application but did not carry as much weight as other parts. While decision makers took it into consideration, it had little weight on the outcome of the decision. In the recent case Clearwater Mussels Limited v Marlborough District Council [2019] NZHC 961, the High Court found that:

> "Although Clearwater's investment in the farms was relatively modest, it would be wrong to be dismissive of the investment or the downstream loss of revenue from a rejection of the applications. Nevertheless, there was nothing in the Act, Coastal Policy Statement or Sounds Plan that directed the Court to protect against a loss of investment that might be suffered by Clearwater Mussels Ltd."[69]

The current investment is acknowledged by the decision makers but is given little weight in the overall outcome of the decision. This mechanism under s 104 is meant to recognise the investment and potentially give it more weighting. The court found "If the economic impact was larger, on a regional or national scale" the court said, "it might have been different".[70]

5.2 Effectiveness of Coastal Plans

Throughout the interviews there was a number of different of policies and plans that were highlighted. The predominant planning documents that were raised were the RMA, NZCPS, Fisheries Act, Regional Coastal Policy Statements and the Regional Coastal Plans. The two most commonly talked about was the New Zealand Coastal Policy Statement and the Regional Coastal plans. While the regional coastal policy statement was raised by some participants it was not as frequently raised. There was a real push by respondent I to address the renewal of consents at a "planning stage" compared to the alternative of dealing with the replacement consents on a consent by consent basis.

The RMA sets out the framework for the management of marine farming as well as integrating a number of different laws. Respondent D when interviewed commented that it is the "best environmental piece of legislation in New Zealand history" while others within the industry had some general frustrations with the public participation. Overall the majority of the people were happy with the tests within the RMA for the replacement of consents.

[69] Clearwater Mussels Limited v Marlborough District Council [2019] in para [42]
[70] Clearwater Mussels Limited v Marlborough District Council [2019] in para [42]

The NZCPS has become an integral part of planning and the management of activities within the coastal marine area after the Environmental Defence Society v New Zealand King Salmon Limited [2014] NZSC 38. The main policies that were raised in this case were policy 13 preservation of natural character and policy 15 natural features and natural landscapes statements. King Salmon also introduced the relevance of Part Two of the RMA and how it should be considered. Policies 11 "Indigenous biological diversity", policy 3 "precautionary approach", policy 7 "strategic planning" and policy 8 "Aquaculture" were also mentioned. These all had an effect on the planning and decision-making process for the replacement of marine farm consents.

Following on from the New Zealand Coastal Policy Statement is the Regional Coastal Plan which has to give effect to the NZCPS. The Regional Coastal Plans dictate the process that the replacement consent application has to go through, the type of activity the application is considered as, the efficiency of a consent renewal, and the overall allocation of space.

The effectiveness of the coastal plan seems to have the biggest impact on the replacement consenting process for existing marine farms. In the respective region, respondent C said that the "biggest challenge is the local plan" to the replacement of a marine farming consent.

Many of the participants indicated that if the marine farm held a controlled activity status there is a high level of confidence that the consent will be replaced. However, if the activity is either a restricted discretionary, discretionary or non-complying activity there is a decrease in certainty. The confidence levels of applicants were really dependent on the location of the farm and the activity status. Maine farmer B responded when asked about the confidence of getting their marine farms consent replaced was the "feedback has been we just don't know, and these are from consultants that are working in the field". Many of the marine farmers and participants that are involved in the industry are advocating for a controlled activity. This is due to the fact that the replacement consents can go to hearing and when "you go to a hearing you are never quite sure what you are going to get renewed or not. We have already lost two, three, four, five farms" according to participant Q. Respondent H said that the success of a replacement of marine farming consent "reflects a lot on the activity status". One marine farm with a controlled activity status vs a non-complying or discretionary activity status is more likely to have better chance of being renewed.

What was identified by a number of different participants for increasing the efficiency of replacement of marine farm consents was the impact that the actual staff that worked at the council had. Many of the mussel farmers and private consultants eluded to the fact that how experienced a council and staff are with aquaculture was critical. Participant R, "quite frankly it is really dependent

on people that they can secure. Often working with council, very often it comes down to one or more people that are experienced and hands on" respondent Q who was from a private consultancy background said, "we have a good relationship with the council, so the council is quite good, they are very helpful". The staff play an important role in facilitating the replacement of consents. The council staff that deal with coastal permits and the replacement of marine farms consents have a high degree of institutional knowledge. This therefore makes key staff members a critical component of a council's ability to respond to the replacement consents and therefore their effectiveness to deal with marine farming consents.

Coastal plans are very important. However, through the research it was identified that some of the Regional Coastal Plans are quite old and outdated. Respondent J highlighted the fact that:

> "The bottom line is if all aquaculture regional councils had in place by 2024, their reviewed Regional Coastal Plans which gave effect to the NZCPS then you probably wouldn't need the NES, but we don't know that this will be the case. We know that Northland and Auckland have got there, but Southland and Otago won't have, and Marlborough is problematic."

The need for the coastal plans to be current and give effect to the NZCPS has highlighted the fact that many of the regional councils' plans are out of date therefore the need for regional coastal plans to be updated is very important. This participant suggested that if all of the regional councils had adequate regional coastal plans and relevant aquaculture provisions that the need for a NES-MA would be redundant.

There was no general consensus between mussel farmers and private consultants on collaboration in plan reviews. This was to do with the potentially different experiences with their individual regional councils. The participants for the Marlborough Region had varying views as well. Some thought that the aquaculture working group which is developing the aquaculture provisions for the Marlborough Sounds Resource Management Plan was generally viewed as a good process. Respondent S when commenting on the process that is currently occurring in Marlborough is:

> "You get various reports from people some people think it has worked quite well, others have been quite grumpy because they don't thing their views are being listened to on these contentious issues."

This is representative of planning within the coastal marine environment. Take the Foreshore and Seabed, for example, and how emotive that became regarding planning, ownership and the ability to

participate in the utilization of the public water space. A hikoi in 2004 drew 20,000 people at Parliament in protest of the Foreshore and Seabed Act (Toki, 2008). Respondent S highlighted that "using public water space, people get emotional". Public participation within this therefore plays an important role within the planning process which is critical to the success of management of the coastal marine area.

5.3 Public Participation

Public participation was a controversial issue which was identified throughout the interview process. There were many alternative opinions that were raised in the current process under the RMA. These controversial issues were surrounding the level of consultation and public engagement. All Regional Councils associated with the respondents had mechanisms for consultation through memorandums, liaison channels or statutory acknowledgments with iwi or hapū. All applications were sent to the local iwi and hapū surrounding marine farm applications for replacement consents. Their responses varied and were dependent on the location for the replacement application for the marine farming according to the participants interviewed.

It was suggested that due to the Maori Commercial Claims Settlement Act 2004 with allocating 20% of marine farming space to Maori it has enabled iwi and hapū to become a major player within the marine farming and aquaculture industry. Iwi and hapū have to balance their involvement in the industry as well as their own "Kaitiaki" responsibilities. This places iwi and ha hapū in a dilemma or conflict where there is a fine line where they have to be "quite carefully sometimes because you can't get yourself off the position of 'no, we don't think there should be any more marine farming there' but then saying 'we would be quite happy if it was our farm'" as participant G responded. Generally, iwi and hapū had no negative responses and were either supportive or neutral on marine farm replacement consent applications.

In terms of the Protected Customary Rights and Customary Marine Title and the effect on replacement consent applications, these have yet to be tested within the regions where the interview participants were from. As there were applications in place for these rights and titles there is yet to be a decision. This will have a flow on impact for the decision-making process for replacement marine farm consents but also all activities that occur within the coastal marine area.

In addition to that, when asked about other stakeholders that they consider important to consult with, there was a wide range of different responses. While some applicants only considered a few stakeholders, a number of participants provided different stakeholders which were sometimes obscure. There were the key ones such as Department of Conservation, Ministry of Primary Industries, Maritime New Zealand, Te Ohu Kaimoana, Harbour Boards, Regional Councils, quota owners, recreational groups, environmental groups, mussel farming industry, land owners, local rate payer associations, foresters and 'the community' were the main groups raised by the participants to be considered as important stakeholders within the coastal marine area. This is where there seemed to be a problem identified by a number of participants around the consultation and public participation requirement in the consents renewal process that are given public or limited notification status.

For one participant in particular respondent A, who was a relatively small marine farmer/owner operator, the Marine Farming Association had been instrumental in advocating for participation in the Marlborough District Councils aquaculture provisions. The Marine Farming Association have enabled the involvement of the smaller operators to assist and participate with the process when they may not have the means or necessary skills to participate. This is where the larger operators have an advantage as they have the means, financial and political power to weigh in on many of these participation processes and enlist the professional help needed to advocate for their ongoing and future operations.

The general consensus from the industry and private consultants is that public participation added a great degree of frustration. This is around the submission process of the RMA. Participant E believes that some submitters take advantage of the RMA. There are two main areas where this frustration stems from. The first being time and cost while the second being the concept of "localism". The first part of the frustration is if a replacement consent application is a "public or limited notified consent application" and if there is a resulting submission it can dramatically increase the time and cost of the overall exercise of replacing an existing consent. The submission and hearing process increased the additional workload of the consultants, marine farmers and councils. Many of the submissions come from property owners where the mussel farms are situated directly in front of. The biggest concern from a number of stakeholders is that predominantly in Marlborough in 2024 when all of these marine farms come up for replacement that many of the consents will be notified and attract submissions drawing the time and consent cost out.

For the public participation on the National Environmental Standard for Marine Aquaculture received a total of 107 submissions. Only 55% of the submission were in support of the NES-MA and

expressed their support for the proposal with some suggested modifications. The main supporters of the proposed NES-MA were the aquaculture industry, Regional Councils and the majority of the iwi organisations. There was a large proportion of the submitters which accounted for 33% who were opposed to the standard either in part or entirely and the remaining 12% had a neutral position or did not state their position on the NES-MA. This is a relatively small number of submissions on the NES-MA considering it manages the allocation of the public space for the next generation.

The second part of the frustration raised is surrounding the concept of "local issue". This localism issue was also found by Rennie (2010) while assessing the transition of marine farm consent in Wainui Bay in Golden Bay which still remains a "controversial" inshore site. The concept of a "local issue" was identified though that applicant themselves did not live in the Wainui Bay but added to the local economy (Rennie, 2012). While the local community felt that their adjacency to the coastal Wainui Bay should give them a stronger say over the water space (Rennie, 2012).

Many participants identified this in the interviews that landowners and bach owners were opposing these applications and the private consultants and marine famers argued that many of the landowners and bach owners were not permanent therefore raising the question of "localism". This is why many of the marine farmers and private consultants called for the public engagement to be "ring fenced". There seemed to be a push by a number of the participants to limit the public consultation process and base consenting decisions off a greater scientific approach. To the mussel farmers and private consultants, the submission process decreases the certainty and security of the process.

One participant argued that the current public submission process is relatively effective at providing good environmental outcomes. Respondent G said that:

> "The process it goes through a public notification and submission, I think some of them end up in the environment court. They go through is pretty robust assessment and I kind of think that operates quite well."

While there is some disagreement across the public consultation process it is important to note that the occupation of marine farms in coastal marine area is on public space therefore the public participation is, arguably, important in making any decision within this space. Respondent G said that:

> "When something is done in house without public notification. The problem is you create all types of views which are captured by the industry. Because the only people involved in the process are the council and the applicants. So, the checks and balances to ensure that you are having a robust decision are gone and since there is such a large number of them. The danger is the council basically becomes captured by the industry and you don't get good decisions."

This emphasises the point that public participation is critical within the replacement consent process to enable all perspectives to be taken into account during the decision-making process. Without this there is a major real risk that there is a decrease in the transparency of the decision-making process.

5.4 Fisheries Act and the Resource Management Act Dual Permitting System

Opinions differed on whether there should be a dual permitting system for marine farming activities. Some interviewees suggested that in a historical context that the "Undue Adverse Effects" test was a much more important process for allocating coastal marine space when marine farms were first being established. Respondent S argued that against fisheries quota holders having a "prior right to space" within the coastal marine area and alienating aquaculture activities, it was "grossly unfair".

Many of the private and public planners recognised that the Fisheries "UAE" test was an important requirement which should be upheld by MPI/Fisheries New Zealand as it is outside the scope of the Regional Council role. It was important that the role remained with Fisheries New Zealand. Participant M a public planner indicated that it was "not unusual that an activity required two permits" under the RMA. There were concerns raised by some of the participants regarding frustration that it brings the applicants during the application process.

Some of the participants noted that for existing marine farms unless tagged by the Ministry of Fisheries during the initial application and undue adverse effect of the marine farm the Fisheries Act will have few implications in the decision-making process. However, if the marine farm is to shift locations or the replacement consent requires a realignment of the marine farm, it theoretically would require the scrutiny of the UAE test. In all the participants' experience they had never come across an UAE test which has not been approved. Participant S alluded to the fact that the realignment or new location of a marine farm is actually creating new marine farming space therefore in theory the 20% allocation of marine farming space should go to the Māori under the Māori Commercial Claims Settlement Act 2004. The Fisheries Act does not have an effect on the security or certainty of replacement marine farm replacement consents.

5.5 The Allocation of Space

The allocation of space was an important topic which had a wide range of responses to questions surrounding the use of Aquaculture Management Areas and alternatives. The majority of respondents acknowledged that the AMA were a positive way of managing the coastal marine space. The key characteristic that participants like and was pointed out by participant G in particular "I think it is good for everyone if we can zone for areas of aquaculture and make it clear where aquaculture is, where it is appropriate, obviously where it is not appropriate". The AMA enabled certainty and security for not only the Industry but also other stakeholders.

In one region where the interview took place and where there was AMA in place, Respondent P participant's response to whether the AMA was good practice or not was:

> "Yes definitely, makes a really good framework, policy and rule frame work, really its a lot clearer if you do have them. I think it gives better community and industry certainty of where it can occur. Industry certainty about longevity in that space, and issues that they need to be putting their minds to."

The aquaculture management areas provide a consistent and integrated approach to management of the Coastal Marine Area and the aquaculture activities. Participant Q implied that the AMA if developed would be "great because they give security as long as they are a controlled activity and as long as they were for a 35-year consent period". It was noted that AMA's were a better way of allocating space rather than the current ad hoc system.

There were participants S and G that noted the historical context of AMA's. When the AMA's were introduced in 2004 where it was based on "sectoral planning" but only focused on one "sector", there was no incentive for councils to create AMA's and there was no monetary funding provided for council from central government. According to respondent G:

> "Councils certainly don't have the money to do it all or the political ability to use rate payers' funds that are based on rate land ownership to plan for the sea for the private benefit of the private sector."

These participants' responses reflect the academic literature on the AMA's failure in a historical context. The council's inability to adopt and then led to the removal of the AMA's in later amendment's meant that they "revert to the ad hoc" method of allocating space. There is still the call for spatial planning within the management of the coastal marine area or zoning that has "flexible approach to where you locate farms" according to respondent I. Aquaculture Management Areas lock in areas of coastal waters which are a "dynamic" environment. The concept of locking an area of coastal marine environment becomes an "intergenerational" issue therefore the need for flexibility in the spatial planning/ AMA is important. The "Tai Timu Tai Pari Sea Change Hauraki Gulf Marine Spatial Plan" was considered to be a potential way of planning for the coastal marine area in other regions.

5.6 Capacity Issues looming in 2024.

Of the regions where the research took place, the largest number of expiring consents is in Marlborough. Both public and private consultant that dealt directly with this region acknowledged this point. The predominant issue is capacity. If farmers leave it to the last minute there will be a "bottle neck" within the council. The bottle neck will affect the local council and the private consultants. From an applicant's point of view respondent Q guessed "everybody is going to need to access the same resources to get plans drawn up, sea bed surveys undertaken and there is a significant amount of detailed work to do" and with marine farmers competing for the same resources there may not be enough capacity for all marine farmers to get their applications ready.

The council will also have a major processing load, and this will put strain on the council resources. A private consultant had a concern for the capacity of the council's staff. Participant Q said "They have got to get people in there that know about marine farming, so it is not easy and having to get staffed up for three-year period" which is a valid point with a large number of replacement consents need over the next five years. A potential issue is a "larger perception is that the Marlborough District Council can't manage their own resources under the RMA which then leads to potential for political interference as we saw with the appointment of commissioners".

It was identified that, as long as the applicants submit their consents six months prior to the expiration date of their consents, they will be able to continue to operate. Under 165ZH (1)(d) "there is no real incentive for them to hurry that application along". This may provide the

council with additional time to get through the large number of consents being submitted. One participant in particular would like to see a greater emphasis placed on pre-application meetings to ensure that applicants have done the appropriate amount of "homework" on the site and what is involved in submitting a complete and compliant submission within the application process.

Some potential issues that may arise original from Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 which grandfathered consents from the previous legislation. This meant that there is no historical data on the existing environment for the marine farm licences established in the 1970s and 1980's. Therefore, an assessment is required on the benthic environment within the consent renewal farming area. Another concern that was raised by participant N is where farms have a "'controlled activity status'" and the submission process raises some concerns, the council can't say no to the farm provided the matters for control are satisfied. So, this example is going to be repeated for I don't know what proportion of farms but there are going to clearly be multiple farms which throw up these issues".

One unexpected point that a participant raised was that the "biggest concern is that all the consents will get rolled over" and that the "incredible opportunity to do better is lost" for another prescribed period of time. The participant said that the "biggest impact on farms is through where they are" and now is a major opportunity to move them to where you get "better production for the mussel farms and get better environmental outcomes". The major issues that the 2024 will raise have positives and negatives outcomes, which with the right policies and plans can lead to improved environmental outcomes.

5.7 Replacement Consent Process Improvements

There were a number of participants that commented on the Government's stance on aquaculture and whether they see it is an integral primary industry that they want to thrive. Participant B alluded to the fact the government is:

> "Voted in to make decisions on the public behalf, so if they believe that it is in New Zealand's interests to farm mussels for export, then they need to create a certainty or a framework of certainty around that it which can allow business to invest and develop that activity."

There was a call from the participants in the industry for guidance from the government to provide greater security and certainty for marine farmers. There was a particular set of participants predominantly mussel farmers and private consultant that were pushing to have marine farming activities designated as a “controlled activity status” with a 35-year term. Changing the status of the marine farming consent would mean that the council would have to renew the consent provided certain requirements were met. The reasoning behind the change was to gain greater industry certainty and security to enable future investment.

The main call was to create a baseline for an assessment of the replacement marine farm resource consent. There was large amount of hope that the proposed National Environmental Standard for Marine Aquaculture would provide this baseline and streamline the process, although it was raised by respondent M private consultant that the National Environmental Standards can be “difficult to implement”. There was also a call by another respondent C just to have roll over replacement consents where there was the equivalent of a “warrant of fitness” test for the famers. The warrant of fitness would be based on consent holder’s compliance with their consent conditions and while also looking at prescribed environmental effects. The individuals that suggested this qualified their statement by stating that it would increase their security and certainty within the approach to marine farm resource consent replacement.

Along with the roll over “warrant of fitness” approach to the replacement consent there were a number of approaches raised such as using a “contest” to allocate space more efficiently or the introduction of coastal tendering and coastal occupation charges for the allocation of space. One participant indicated that coastal tendering would stop the mistakes of the past and any tendered coastal marine space would be based on sound scientific evidence and spatial planning and participant N believed that that coastal occupation charges should look like:

> “A successful tender would be required to pay Coastal occupancy charges, not based on pepper corn rental but something actually meaningful that reflects the occupation of coastal space, to partial fund the monitoring of the cumulative adverse effects, so at the moment you have each individual marine farmer saying. I should not have to pay for water quality monitoring because in the Sounds because I am just one farmer with 3 ha, it’s not me causing the issue, then you got every marine farmer saying that.”

This monitoring could feed into a holistic approach to the mussel farming activity which included a strategic overview of the management of the marine farming. There was a call for bay wide

consenting which can be done on a manageable scale to measure the cumulative effect of marine aquaculture.

Participants H in particular provided examples of other countries and how spatial plans provided a balanced and workable approach to the management of coastal marine areas. Norway was used as an example multiple times as a potential way of managing coastal marine areas for marine farming while the Tai Timu Tai Pari Sea Change Hauraki Gulf Marine Spatial Plan was cited as an alternative for other regions in New Zealand by respondent G.

5.8 Summary

The findings described above have identified a number of different themes, efficiencies and inefficiencies associated with the current planning framework surrounding the replacement of marine farm consents. Through the identified themes there became two perspective which showed through. The first surrounding the use of the coastal marine area as a right to utilise for business activities which need security and certainty of tenure to operate. While others viewed the coastal marine area as a common area in which any decisions must be calculated to ensure that the environment is managed appropriately for all users.

Through the interviews there were no major concerns with the process of replacement consents for marine farms under the Resource Management Act and Fisheries Act participants understood the need for the dual permitting system but recognised the fact that it can create frustration among the marine farmers by having two systems. Yet one observed implication within the process of the replacement of marine farm consents is the effectiveness of the Regional Coastal Plan and that the failure of some councils to implement the New Zealand Coastal Policy Statement 2010 in time for 2024 has necessitated the NES-MA to avoid the associated capacity issues for councils and industries.

In terms of the participation within the replacement of marine farm consents there were significant avenues for iwi and hapū to participate however they are placed in dilemma of being the kaitiaki of their coastal marine space and also trying to derive economic output. While there was consensus from the industry that the process for the public participation should be restricted which would decrease the expense of replacement consent process, this would be at the cost of decreasing public participation.

To enable greater certainty, security in the replacement of consents and the general management of coastal marine area, participants highlighted the need for either spatial planning or zoning approaches which would incorporate bay wide consenting, or coastal tendering as part of the solution. While there was the recognition of aquaculture management areas the participants did not believe this as the most efficient way of allocating coastal marine area. Overall, there were a number of suggestions made on how to improve the replacement of consents. The general consensus was that there needed to be guidance from government and greater lenience for the replacement of marine farm consents. In the chapter that follows is a discussion surrounding the replacement of marine farm consents in regard to what has been discussed in this chapter and the National Environmental Standard for Marine Aquaculture and in terms of business security, certainty, environmental outcomes and coastal management.

Chapter 6

Discussion

The original aim of this research was to develop an efficient framework and resource for Regional Councils to utilize in regard to the replacement of marine farming consents, to improve industry security and certainty while promoting better environmental outcomes. The Cabinet approved a policy directing the drafting of the National Environmental Standard for Marine Aquaculture in 2019 which sought to address this, It did this by setting out a national baseline for the renewal of marine farm consents to ensure that there is greater certainty for marine farmers when it comes time to replace their existing consents. The following chapter will discuss the findings of the study in relation to the cabinet policy directing the National Environmental Standard for Marine Aquaculture and with reference to the existing literature. The first section of the discussion will compare and contrast the proposed Cabinet policy on the NES-MA and the research findings including submissions from the consultation on the NES-MA. The discussion will be divided into three main themes:

1. Business security and certainty,
2. Improved environmental outcomes and
3. Coastal management.

The first theme addresses the major concern within the marine farming industry on their continuance of tenure of the coastal marine area through the replacement of marine farming consents and secondly what mechanisms provide suitable environmental outcomes. The third theme addresses the fundamental role of coastal management that the NES-MA delivers, whether or not it was appropriate and the wider ramifications of implementing an NES-MA to secure business confidence for other industries within New Zealand.

6.1 Broader Discussion of the Proposed NES-MA

Planning for aquaculture within the coastal marine area has been a turbulent and controversial issue for the marine farming industry within a historical context. Since the introduction of the Resource Management Act in 1991, the marine farming sector has seen a total of three amendments and reforms to the legislation that regulates how marine farming is managed in the coastal marine area. Additionally, important case law has been developed testing the RMA for aquaculture. The latest

Cabinet document directing policy on the National Environmental Standard for Marine Aquaculture will become the fourth change in aquaculture management in New Zealand. The question surrounding the soon to be implemented NES-MA is:

- Will it have a beneficial effect on the business security and certainty while improving environmental outcomes.
- Improve coastal management?
- Or will it just become another change to the number of already existing changes that have been implemented to improve the management of the marine farming?

The Cabinet document realised in 2019 outlined the NES-MA, this will be compared and contrasted to the findings of this research and the submissions on the NES-MA during the public consultation. This will provide a well-informed comparison of what marine farmers, private and public sector industry experts wanted in contrast to the what NES-MA is going to deliver.

Table 3 outlines the main proposed changes to the consent application and the decision-making process for the replacement consents. This table draws out the specific information related to the occupation of marine space for the replacement of existing marine farming.

Table 3: Representing What Proposed NES-MA Core Components

The Proposed National Environmental Standard for Marine Aquaculture Core Components	
Findings	**NES-MA**
The coastal plans and the activity status play an important role in the probability of replacing a consent. There was the call by a number of private consultants, marine farmers and industry bodies to push for marine farming activity to have controlled activity status. The NES-MA does not go as far providing marine farming with a controlled activity status but has opted for a restricted- discretionary activity status. This is an improvement and addresses the industry concerns as it prescribes a number of different matters that need to be taken into consideration with the replacement of marine farm consents while potentially allowing the full roll-over of consents that a controlled activity may provide within existing regional coastal plans.	• Make applications for replacement consents for existing marine farms a restricted discretionary activity, including opportunities for small-scale realignments and changes in approved species, provided the area has not been identified as inappropriate for aquaculture in a regional coastal plan.
The main effects that were raised throughout the course of the research were landscape values, significant benthic environments and, ecological effects. As the cabinet document does not specify any matters of discretion. A comparison of what the findings cannot be compared to the cabinet document. In terms of the ensuring that all marine farms are subject to a seabed survey is critical as many of the marine farms that were transitioned in 2004 had no assessment of the seabed. This is an important step that was recognised by some participants.	• Clearly specify matters of discretion, which address the key environmental effects of aquaculture. These encompass ecological effects determined through an extensive scientific literature review of the effects of aquaculture. • Ensures all farms, including those consented before the RMA came into force, are subject to appropriate seabed surveys to ensure adverse effects on significant habitats are avoided.
There was major call within the industry to “ring fence” the notification process for the replacement of marine farm consents. The ring fencing around notification was predominantly in relation to the public and community involvement. This provision to “preclude” public or limited notification satisfies the industries want for ring fencing of the notification process. This does however create power imbalances in the decision-making process. Where application have changes to the activities that are allowed by regional coastal plan use the current notification process is suitable. Participants from the industry felt that limiting the notification process was necessary.	• Preclude public or limited notification for most replacement consent applications, except of affected tangata whenua, and where special circumstances and other RMA notification exceptions apply (Sections 95A and 95B). • Councils would follow the normal statutory tests under the RMA to determine whether to notify replacement consent applications that include realignment, species changes that require changes in surface structures and/or involve finfish, and any applicant, once areas that the councils have determined to be inappropriate for aquaculture (if applications are allowed at all in that area)

One participant in particular said that there need to be pre-application meetings and greater onus placed the applicant to do their 'homework' to ensure that they identify the effects of their application. These provisions stick with the industry want for the notification to be 'ring fenced' as it is only considering Tangata Whenua. Tangata Whenua also are well versed in this space as they are major stakeholders within the industry.	• Require pre-application consultation by the applicant to identify and consider Tangata Whenua values in deciding replacement consent applications. • Where this consultation does not occur, a broader matter of discretion on Tangata Whenua values would apply and limited notification would not be precluded, so that iwi could submit on the application.
Throughout the research the two most significant effects for marine farming have been landscape and ecological effects. The landscape effect has been tied to the location of marine farms which need have a consideration in terms of the effects. Through a number of examples of case law, the importance of the landscape values and the need for a consistent and clarified approach to replacement consents was communicated.	• Clarify that consideration of the effects of an existing marine farm on an outstanding area is limited to farms that are partially or fully within an outstanding area.
There were a number of participants that highlighted that the farms could potentially be over significant natural habitat so the provision to alter the location to ensure the protection of these habitats is important.	• Enable, as part of a replacement consent application, a change to the location of an existing marine farm by up to one third of the farm area, to address adverse environmental effects associated with the existing location. Farms larger than 10 hectares and those that use supplementary feeding (i.e finfish farms) would not qualify for this provision
There were calls by several participants to address replacement consents at a planning stage rather than the alternative of addressing them at individual consent by consent basis. This addresses the calls by participants to have the process address the replacement and management of marine farms at a planning stage. However, there were mixed views on the way that councils undertook the public consultation process through their plan changes. It also promotes business security and certainty.	• Allow councils, through their regional coastal plans (which undergo a significant public consultation process), to set activity status for consent applications for existing marine farms that are more lenient than the proposed standard.
Within the three regions where the research was carried out, two already had zones for where aquaculture was considered as an appropriate activity and the other still allocated marine space on an ad hoc basis. The majority of participants called for greater clarity through the form of zoning or spatial planning to improve the	• In areas where, after 1 January 2019, Regional Councils have determined that aquaculture is inappropriate through their regional coastal plan, set a discretionary activity status for replacement consent applications and allow councils to set an activity status that is more stringent.

management of marine farming and increase business security and certainty.	

The predominate outcomes of the NES-MA look very positive for the industry security and certainty while promoting beneficial environmental outcomes. They address the concerns of the industry across multiple areas. However, there are some key areas which the cabinet document on the NES-MA has not addressed. Table 4 highlights the finding's important aspects that the participants believed need to be addressed but the Cabinet document NES-MA 2019 subsequently does not address.

Table 4: Table Representing What The NES-MA Will Not Address

What the National Environmental Standard for Marine Aquaculture will not Address	
Capacity issues	The most significant issue that is arising in 2024 is the sheer quantity of consents that will need to be replaced. The greatest concern and risk for marine farmers who are located in the Marlborough Region is a capacity and resourcing issue for the consenting authority is very important. The NES-MA does not take into consideration the capacity issues that the Marlborough District Council will likely be experiencing.
Consent Duration	The NES-MA does not set a prescribed a consent duration. Within the mussel farming industry there was a call by some to increase the coastal permit to 35 years. While the coastal permit does not prescribe a consent duration this can be administered under the Regional Coastal Plans.
Cumulative effects	The potential of the cumulative effects of mussel farming activity was raised by multiple participants throughout the research. The NES-MA has no provisions within the standards that direct councils on how to manage cumulative effect of mussel farming. The changes to realignment will have a positive effect on the cumulative effect on the benthic environment.
Coastal allocation	The NES-MA does not deliver direction on the allocation of marine space. As the replacement for marine farm consents are expiring and the replacement consent is considered as if it's not there (legacy effects it may have caused, such as seabed detritus, are assessed as part of the existing environment). There is the opportunity to plan for existing aquaculture to improve environmental and production outcomes. There was also a call from the participants to have improved planning of where aquaculture

	is appropriate through either spatial planning or zoning for aquaculture activities.

Overall the NES-MA has achieved what the industry has been calling for. However, the NES-MA does raise some points which need to be taken into consideration. The first is that replacement consents for marine farms are 'accommodated activities' under the Marine and Coastal Area (Takutai Moana) Act 2011. Accommodated activities provide for the activity of marine farming to be carried out in the CMA despite there being potentially for a marine title to be recognised. In relation to aquaculture activity to be carried out in the coastal marine area provided that there is no increase in the area occupied, change of location for what the existing activity was granted for.[71] The NES-MA and the MCAA allow for the replacement consents to be accommodating activities unless there is a change in the area farmed or location. If there was a change then it would have to receive permission form CMT holders.

While the NES-MA precludes notification (but strengthens pre application to include Tangata Whenua values in deciding replacement consent applications) it limits the actual power of the Customary Marine Title group as it is considered an accommodating activity. The limiting of the power of iwi and hapū means they cannot play as strong a role as kaitiaki for the CMA. However, since some iwi and hapū play a major role in the marine farming industry it places them in difficult position of balancing their role of kaitiaki for the CMA and their economic interest in marine farming. The NES-MA has placed some iwi and hapū in a position that may affect the ability to manage the environment for cultural benefits while also limiting their ability to derive positive economic output.

Another issues that emerges from the present study is the exclusion of the Wilson Bay Marine Farming Zone (Waikato region) and the Tasman Aquaculture Management Areas including the Wainui Bay (in the Tasman District) spat catching farms. The rationale behind the prosed NES-MA leaving these two regions aquaculture zones and management areas out of the NES-MA is due the "significant planning processes undertaken for aquaculture in those areas to date" (MPI Fisheries New Zealand, 2019). National Environmental Standards provide the government to set regulations for all Territorial and Regional Authorities or specific regions (RMA, 1991). Interestingly, since these two regions have been through an adequate planning process it has enabled them to be exempt from the NES-MA. This raises the question, if all of the aquaculture regions went through the appropriate planning process for the coastal marine area would they have been exempted from the NES-MA? This will be discussed further under the coastal management theme.

[71] MCAA, s 64

It is interesting to note that the proposed NES-MA does not alter the decision-making process that is required under the Resource Management Act. Initially the aim of this research was to identify and review the mechanisms of decision-making on the replacement consents processes. Then develop a framework on how to make an effective and efficient replacement consent process for marine farms. Due to the methodology shift and new assessment of the cabinet policy directing the NES-MA and what has been delivered in terms of the decision-making process has altered very little in the terms of what the RMA's original process had provided.

There has been no change to the way that a replacement consent has been carried out under s 165ZG to s 165ZJ or what is need in an application. The predominant change that will come under the NES-MA is precluding notification. The NES-MA main objective is to alter the Regional Coastal Plans that the local authorities are responsible for assessing the replacement of marine farm consents against. This reflects the industry's and submitters' views on the replacement of consents and legislation that informs it. The RMA is still suitable legislation for the replacement of marine farm consents which will have both positive and negative effects on the security and certainty of business and the associated environmental outcomes.

6.2 Business Security and Certainty vs Improved Environmental Outcomes

As business security and certainty for the marine farming industry is an underpinning theme throughout the literature review where the importance of the coastal permits as a bundle of property rights surfaced, the results confirmed the industry's need for security and certainty of tenure of the coastal permits and therefore has led to the development on future implementation of the NES-MA. The results from the interviews supported John Locke's labour theory of property. As the marine farmers have mixed their labour with the commons of the coastal marine area, they have perceived a greater property right than what the current resource consents provide. The current property rights of the RMA provide marine farmers to occupy space within the CMA for a specific period of time and now their self-attributed property right is set to expire. It has raised uncertainty of what will happen to their invested labour and their property right. As the RMA does not guarantee replacement consents it has caused widespread uncertainty and decreased levels of business security. As Ngāi Tahu submitted on the NES-MA that 'it has been a difficult choice for iwi to consider reinvesting in the aquaculture industry due to the uncertainty of return on investment' shows the level of uncertainty that is held within the industry.

Acknowledging the marine farmers perception of a property right, the coastal CMA still is a common pool resource which is public property. The reason for a limited tenure on the resource consent is to enable the utilization of coastal marine space for a specific time period and when it comes time to replace the consents it is up to the current planning legislation and framework to decide whether or not the activity is appropriate to continue. The proposed implementation of the NES-MA creating a restricted-discretionary activity status for the replacement of marine farms consents will improve business security. Throughout the industry submitters on the NES-MA called for a controlled activity status which would provide even greater business security. This would however undermine the coastal marine area as public property.

The NES-MA has recognised the labour that marine farmers have invested into their property rights and created a framework to help provide for an efficient system by restricting the level of discretion that the consenting authority can take into account when deciding outcome of a replacement consent. By restricting the level of discretion, it improves the confidence that an applicant will have on gaining a replacement marine farm consent, therefore increasing business certainty.

The process of reconsenting all marine farms that are to come up for renewal by 2025 was estimated to cost $50 million. The implementation of the NES-MA will significantly reduce this cost and therefore reduce that cost of lost investment promoting business security and certainty. This was an argument that was highlighted in the results of this research, that the reconsenting process has led to lost investment within the marine farming industry. It could be argued that the reconsenting process is the investment in the occupation of the coastal marine area to allow marine farms to continue to farm for the specified time. Another way that this cost is reduced is through the precluding of notification of the consents. One of the key findings from the results where that participants highlighted the cost associated with public notification, which leads to Council hearings and potential Environment Court hearing costs, decreases the certainty and security the applicant will have in obtaining the replacement of consents. By precluding notification, it not only reduces the cost to the marine farmers when it comes time to replace consent but also increases the security of tenure and business certainty.

One particular area where the NES-MA does not provide business security or security is in the tenure of the marine farms. Ideally the tenure of marine farms would be consented for the maximum time period of 35 years which would create the greatest business security and certainty. However the RMA does provide some form of certainty for marine farmers where under s 123A(2) it prescribes a minimum time period of 20 years. To increase business certainty, a 35-year consent would enable

this. While the NES-MA is facilitating business security it also provides a range of mechanisms to enhance environmental outcomes.

The NES-MA has prescribed a number of mechanisms to enhance environmental outcomes. The NES-MA ability for marine farmers to make 'small scale realignments' where farms are located over areas of significant habitat to protect it from the effect of mussel farming is important for providing environmental benefit. The small-scale realignments mechanism enables the Regional Council to consider the matter of national importance 6(c) the protection of outstanding areas of significant indigenous vegetation and significant habitats of indigenous fauna under the RMA. This also allows marine farms to give effect to policy 11 of the NZCPS. This mechanism allows a degree of flexibility to the replacement of resource consents for marine farming. The flexibility is derived from the ability of the realignments to circumvent the plan change process. Instead of the re-consenting the marine farms which some of them may have environmental effects that are more than minor on the environment or declining the application on the basis of environmental effects. The small-scale realignments empower the NES-MA with the flexibility to move these farms slightly which produces environmental and business outcomes. The CMA is a dynamic environment which needs a degree of flexibility to be built into the planning provisions to manage marine farming activities.

The other environmental outcome which provides a benefit to the CMA area is that all replacement consent applications must be subject to the appropriate seabed surveys to ensure that the adverse effects are avoided on significant habitats. This becomes increasing important in regard to the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 where a large quantity of marine farms was transitioned into the RMA and were not subject to any requirement of seabed surveys. Therefore, there is little known about what is actually located under many marine farms which raises the questions what was the existing environment? Without knowing the existing environment, it will be hard to assess the level of effects and what this means for the outcome on the decision-making process. However, this provision within the NES-MA is a positive as it will provide the information to initiate the small-scale realignment mechanisms to enhance environmental outcomes.

These mechanisms also improve business security and certainty as the current system not have the flexibility built in through the small-scale realignments. If a system had no small-scale realignments and a farm was located over an area of outstanding or significant indigenous vegetation and significant habitats of indigenous fauna with guidance from Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd SC 82/2012 [2014] NZCS38 (which confirmed that 'to be avoided' means 'avoid'). This would mean that the replacement marine farm application would be denied. Hence having some form of flexibility through the small-scale realignments provides the applicants

with the opportunity to alter the location of the farms to avoid the effect on sensitive habitat or fauna, Therefore, they are still able to utilize their property right which creates greater certainty in the replacement consent with the flow on effect of increased business security. This provides better environmental outcomes and industry outcomes.

Initially the NES-MA could be considered as Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 in disguise. The Aquaculture Reform (Repeals and Transitional Provisions) Act main purpose was to transition marine farms into the RMA which were under older legislation. During that time, they would have faced the same business security and certainty issues as they do today. Some of the farms may not have been transitioned in the RMA due to the effect on the environment. Many of these farms are now up for replacement again and are now facing the same business security and certainty issues as what was faced in 2004. The NES-MA is acting as a way of replacing the consents as did the Aquaculture Reform (Repeals and Transitional Provisions) Act, providing business security and certainty, but also has meaningful mechanisms which protect the environment. The approach of the NES-MA has been to allow councils to deal with the replacement marine farm issues on a consent by consent basis which will provide the need for businesses security and certainty while including associated environmental outcomes. However, it does not deal with the overarching issues of coastal management.

6.3 Coastal Management

Observed in the literature review were multiple ways that coastal management can be carried out therefore making coastal management an important theme to address. The NES-MA prescribes a top-down governmental approach to managing the CMA and the occupation of property rights to this space which marine farms essentially hold. As a result of the NES-MA it will significantly strengthen the property rights of the marine farmers by the restricted-discretionary activity status for replacement consents and improve the chance of retaining tenure of the consent as it increases the likelihood of the consents being replaced. What the NES-MA has essentially created is vesting greater power in the Regional Councils and the Marine Farming Industry while reducing the community's power by removing the requirement for notification of the consents.

The NES-MA has essentially created a baseline for the replacement of all marine farming consents across most regions. The matters of discretion that the regional authority decision makers have on the consents are limited to the key environmental effects of aquaculture, which are yet to be finalised, and the precluding of notification. The baseline for the replacement consent has created a

planning framework which is efficient at facilitating the replacement consent process to address the industry concerns and reduce the capacity issue for the major marine farming regions.

By creating these matters of discretion and precluding notification it has virtually decreased the need to relitigate some of the farms.

The NES-MA is effectively a tool to roll over the marine farms while providing better environmental outcomes than what was seen in the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004. The NES-MA deals with the management of consents by prescribing the activity status rather than dealing with the coastal management at a planning level. The NES-MA is acting as a backstop legislation for the major marine farming Regional Councils who haven't implemented appropriate coastal plans to deal with the associated issue of replacement marine farm consents.

Precluding notification this has shifted the level of transparency and therefore moved the power balances. By precluding notification, it decreases the role of the public participation to a nonparticipator role and would be considered as manipulation under Arnstein's ladder of participation. Precluding the notification and decreasing the level of public participation reaffirms the property right which the marine farmers have in the CMA. This has the effect of decreasing the equity that the property rights have for the public and increases the chances that future generations will be locked out of the specific coastal marine areas. This has the potential to become an intergenerational issue. This could be avoided if there was the for some meaningful public participation for replacement consents which benefited both the public and the marine farmers.

By precluding the notification, the power is held by the decision makers, industry, iwi and hapu who are already placed in a difficult position. The NES-MA potentially has captured the process by limiting the public participation. Going forward this may become problematic unless addressed in detail with the Regional Coastal Plan.

This is where the NES-MA has missed an opportunity to address a number of critical planning issues that relate to the management of marine farming at the planning stage. The current system of allocating space on an ad hoc first come first serve basis where the NES-MA presented an opportunity to set guidelines on managing the CMA. Recently in New Zealand there has been a push for spatial planning within the coastal environment through the Tai Timu Tai Pari Sea Change Hauraki Gulf Marine Spatial Plan. While there are multiple ways to manage the CMA, which were highlighted within this literature review there are some major improvements that could have been implemented through the NES-MA. The opportunity to relocate 62% of the industry to alternative locations that

could have increased production for the marine farmers and provided improved environmental outcomes is rarely ever seen. While there may be an initial cost to the marine farmers for moving their marine farms to alternate locations. The locations would be determined where they appropriate for not only environmental outcomes but to a position that increases the production and economic viability of the marine farms. This in turn would increase business security and certainty. This is where the NES-MA lacks any real substance other than the dealing with the consents at a planning level.

There is the possibility that the NES-MA would not be needed if the coastal plans gave effect to the NZCPS 2010, for instance, in regions like Canterbury where their Regional Coastal Plan became operative in 2005 and still remains as a first-generation plan which does not give effect to the NZCPS 2010. If the policies within the NZCPS had been given effect to by the Regional Coastal plans. This was highlighted by respondent J:

> "The bottom line is if all aquaculture Regional Councils had in place by 2024 their reviewed Regional Coastal Plans which gave effect to the NZCPS then you probably wouldn't need the NES, but we don't know that this will be the case. We know that Northland and Auckland have got there, but Southland and Otago won't have, and Marlborough is problematic."

Multiple Regional Councils are still relying on their first generation plans which do not give effect to the new policies. These policies under the NZCPS 2010 have a number of strong directions on such as Policy 4 which sets the integrated management of natural and physical resources or in particular the need to give effect to Policy 7 strategic planning. This policy prescribes a number of mechanisms in preparing Regional Policy Statements and Plans to identify where particular activities and forms of subdivision, use and development are appropriate an inappropriate. Where practicable plans set thresholds (Including zones, standards, or targets) to assist at in dealing with cumulative effects. Policy 8 also specifically indicates the need to:

> Recognise the significant existing and potential contribution of aquaculture to the social, economic and cultural well-being of people and communities by:
>
> (a) including in regional policy statements and regional coastal plans provision for aquaculture activities in appropriate places in the coastal environment, recognising that relevant considerations may include:

If the Regional Coastal plans have given effect to the NZCPS the plans should “recognise the significant existing” marine farming that exists within their regions and create a solution through the Regional Coastal Plan to manage the replacement of existing marine farm consents. Therefore, not requiring a NES-MA to act as a back stop for the Regions which have not given effect to the NZCPS.

This is further demonstrated in the NES-MA exempting the Tasman Aquaculture Management Areas including the Wainui Bay (in the Tasman District) spat catching farms and the Wilson Bay Marine Farming Zone (Waikato Region). These have undergone significant planning processes. In terms of Wainui Bay spat catching a strategic approach has been taken which was guided by the Environment Court which has enabled this to be exempt from the NES-MA. Due to the approach undertaken by the Tasman District Council it shows that with an adequate coastal plan which gives effect to the NZCPS 2010 the NES-MA becomes redundant. Currently Marlborough is reviewing their Regional Coastal Plan and will be of interest to see if their new plan will render the NES-MA redundant.

Essentially, if the NZCPS was fully given effect to in all major marine farming regions the NES-MA may not have been required as back stop to ensure business security and certainty. In this case the replacement of a marine consent is of high importance for the regions as it brings in vital jobs and economic growth.

The Regional Coastal Plan is critical to the success of the replacement of marine farm consents but also the general planning and the potential for future of marine farming. While a sectorial approach to Regional Coastal Plans was tried and failed in the mid 2000’s for the planning through the form of Aquaculture Management Areas and with the proposed NES-MA delivering a baseline for replacing existing marine farm consents, the need for direction on where aquaculture is appropriate and inappropriate still needs to be addressed. To deliver greater business security and certainty while also improving environmental, production and coastal management outcomes there needs to be Regional Coastal Plans which identify appropriate space for marine aquaculture. What was addressed in the Tai Timu Tai Pari Sea Change Hauraki Gulf Marine Spatial Plan with stakeholders, key components, the ability to address existing aquaculture and provide for new coastal marine space for the expansion of marine farming is what is needed as it gives direction. There was strong public participation which would allow for the provisions of the NES-MA to preclude notification to be more acceptable while also implementing it under the Regional Coastal Plan would make it regulatory enforceable. This could be a potential option for the creation and development of regions which need to update their regional coastal plans.

In the case of the replacement of marine farm consents the need for the NES-MA was high to guarantee that the industry has the ability to continue to operate. This raises the broader question, does the NES-MA set a precedent that vital primary sector industries need a national environmental standard put in place to replace the existing consents. For example, in Southland alone in the years between 1994 and 2002 the dairy herd increased by 212% due to the associated dairy conversions (Macleod & Moller, 2006). Due to these farming systems being subject to the provisions of the RMA will that mean that a national environmental standard will be required to ensure that the dairy farming can continue when it comes time to replace their consents? The NES-MA has shown that the government is willing to support the industry to enable them to continue to operate the same practices without trying to influence meaningful change to the current system to enhance environmental and business outcomes.

6.4 Summary

This chapter has outlined the key components of the National Environmental Standard for Marine Aquaculture and compares it against what the participants of the research thought that needed to be addressed. While the NES-MA addressed key areas that participants wanted addressed, it actually in turn has facilitated a baseline for the replacement of marine farm consents. By doing this it has streamlined the process and has stopped the need for each marine farm to re litigate the reason why it was there in the first place. This has a positive effect on the business security, certainty and associated environmental outcomes. Due to the NES-MA dealing with the consents on a consent by consent basis, however, it has left a gap in direction for coastal management that either should have been completed under the NZCPS or for which there is need for a greater government direction.

Chapter 7

Conclusion

While the idea of replacing a resource, consent seems to be a simple process, in reality it involves a high degree of complexity. Fundamentally, the action is dealing with property rights, privileges and perceived property rights that adds complexity associated which has multiple different stakeholders which all play an important role. While the replacement consent process is relatively sound under the Resource Management Act it is the associated factors which have the biggest impact on the process.

The original aim of this research was to create an efficient and effective framework to assistance in the replacement of marine farm consents under the Resource Management Act and associated planning framework. A methodological change was need when the Cabinet document drafting the National Environmental Standard for Marine Aquaculture which has effectively created a baseline by streamlining the resource consent process. A qualitative method was undertaken in the research, supplemented by case study approach into the replacement of marine farm consents, 17 semi-structured interviews which contributed the existing literature and analysis of documents and marine farm consents. This facilitated discussion into the replacement of consents which brought about a number of significant findings that's allowed an assessment of the proposed National Environmental Standard for Marine Aquaculture compared to what the research participants thought that should be addressed.

Within the marine farming industry there was major call for planners, consultants and government departments to address the reconsenting problem on a region wide planning scale rather than the current method of addressing each consent on a case by case basis. The National Environmental Standard for Marine Aquaculture has taken this direction of dealing with the replacement of marine farm consents on a consent by consent basis by prescribing a restricted-discretionary activity status. By doing this the government has signalled their support to ensure that the replacement of marine farm consents tenure.

The Resource Management Act has provided a strong basis for the replacement of marine farms consents however the associated factors of business security and certainty, environmental outcomes and coastal management have had a major influence on the direction that the NES-MA has taken. The clarification of effects of marine farming, creating a restricted-discretionary activity status, setting specific matters of desertion and precluding notification have all lead to increased business

security and certainty for the marine farming. However, by precluding notification it has decreased the of level public participation and shifted the power imbalance. The NES-MA has strengthened the property right of the marine farms within the coastal marine area and decreasing the equity of other user's potential to participate in management of coastal marine area.

The opportunity has been identified for the mussel farming industry to rethink the way that the mussel farming industry occupies the coastal marine farming space within the case study regions and in a wider New Zealand context. The opportunity to create a planning system which potential incorporates a spatial planning system which manages the coastal marine environment including multiple users, ensures that the production and environmental protection are balanced.

This research was subject to several limitations. The first being this research has been restricted to the scope and the size of a dissertation. This research was based on a singular case study into the replacement of marine farm consents, It would have been beneficial to assess other industries which have undergone the same issue with a large number of consents that have come up for renewal. The next limitation is the existing literature on the replacement of marine farm consents. Throughout the research considerable effort was used to try and find existing literature in the area of the replacement of consents under the RMA however there was little to no information.
The third limitation is that this issue is not only limited to the case study areas of Tasman, Marlborough and Canterbury regions however these make up the vast majority of consents collectively. To inform the research to a greater depth an analysis of other regions such as the Waikato or the Northland regions with the associated interviews would have provided greater substance and would have been beneficial to the research.

The largest limiting factor is the release of the National Environmental Standard for Marine Aquaculture. There had seemed to be an inaction in the development of the NES-MA, possibly due to the change of government in the general election of 2017, however, in July 2019 the release of the cabinet document drafting the policy for the NES-MA was released. This caused the methodological shift. This limited my research as the questions I asked during the interviews could have been altered to be more specific to the proposed NES-MA.

Despite the limitations there is further research that could be conducted in to the field of the replacement if marine farm consents, the general replacement of marine farm consents and the additional management of coastal marine area. The next logical step in research would be to assess how effective the NES-MA is at renewing marine farm consents and the implications on business security, certainty and environmental outcomes. While another possible avenue is looking to how

well the NZCPS is given effect by regional councils and weather there needs to be greater emphasis placed on the regional coastal planning and the potential for a spatial planning mechanism throughout New Zealand.

References

Agrawal, A. (2001). Common Property Institutions and Sustainable Governance of Resources. *World* Development, *29*(10), 1649-1672. https://doi.org/10.1016/S0305-750X(01)00063-8

Agrawal, A., & Ostrom, E. (1999). Collective Action, Property Rights, and Devolution in Forest and Protected Area Management. Meinzen-Dick, R. (ed.), *Property Rights and Devolution of Natural Resource Management: Exchange of Knowledge and Implications for Policy*. Retrieved from https://pdfs.semanticscholar.org/1cf9/6a5e826a876eb01c25d6c86ff20a89804209.pdf

Ansell., C, & Gash, A. (2007). Collaborative Governance in Theory and Practice. *Journal of Public Administration Research and Theory*, *18*(4), 543-571. https://doi.org/10.1093/jopart/mum032

Aquaculture Reform (Repeals and Transitional Provisions) Act, No. 109. (2004). Retrieved from http://www.legislation.govt.nz/act/public/2004/0109/latest/DLM324738.html

Armitage, D. (2005). Adaptive Capacity and Community-Based Natural Resource Management. *Environmental Management*, *35*(6), 703-715. doi: 10.1007/s00267-004-0076-z

Arnstein, S. (1969). A Ladder Of Citizen Participation. *Journal of the American Institute of Planners*, *35*(4), 216-224, doi: 10.1080/01944366908977225

Banta, W., & Gibbs, M. (2009). Factors Controlling the Development of the Aquaculture Industry in New Zealand: Legislative Reform and Social Carrying Capacity. *Coastal Management*, *37*(2), 170-196, doi: 10.1080/08920750902758473

Banta, W., & Gibbs, M. (2009). Factors Controlling the Development of the Aquaculture Industry in New Zealand: Legislative Reform and Social Carrying Capacity. *Coastal Management*, *37*(2), 170-196. doi: 10.1080/08920750902758473

Bardhan, P. (1993). Symposium on Management of Local Commons. *Journal of Economic Perspectives, 7*(4), 87-92.

Bargh, M. (2006). Changing The Game Plan: The Foreshore and Seabed Act and Constitutional Change, Kōtuitui. *New Zealand Journal of Social Sciences Online*, *1*(1), 13-24, doi: 10.1080/1177083X.2006.9522408

Baron, J. (2014). Rescuing the Bundle-of-Rights Metaphor in Property Law. *University of Cincinnati Law Review*, *82*(1), 1-44.

Berkes, F. (2006). Commons Theory for Marine Resource Management in a Complex World. *Senri Ethnological Studies*, *67*, 12-31

Bess, R. (2005). Expanding New Zealand's Quota Management System. Marine Policy, *29*(4), 339-347. https://doi.org/10.1016/j.marpol.2004.04.008

Bess, R., & Rallapudi, R. (2007). Spatial conflicts in New Zealand fisheries: The Rights of Fishers and Protection of the Marine Environment. Marine Policy, *31*(6), 719-729. doi:10.1016/j.marpol.2006.12.009

Birks, M., & Mills, J. (2015). *Grounded theory: A practical guide (2nd ed)*. London, United Kingdom: Sage Publications Ltd

Boast, R., & Makgill, R. (2011). *Marine and Coastal Area Act: Demystifying the hype (New Zealand Law Society seminar).* Wellington. New Zealand. New Zealand Law Society.

Bremer, S., & Glavovic, B. (2013). Exploring the Science–Policy Interface for Integrated Coastal Management in New Zealand. *Ocean & Coastal Management*, *84*, 107-118. https://doi.org/10.1016/j.ocecoaman.2013.08.008

Casey, M. (2015). Land use. In Salmon., P. & Grinlinton, D., (Eds.), *Environmental Law in New Zealand* (pp. 595-639). Wellington, New Zealand: Thompson Reuters New Zealand Ltd.

Christie, P. (2005). Is Integrated Coastal Management Sustainable? *Ocean & Coastal Management*. *47*, (3-6), 208-232. https://doi.org/10.1016/j.ocecoaman.2005.04.002

Cram, F., Prendergast, T., Taupo, K., Phillips, H., & Parsons, M. (2010). Traditional Knowledge and Decision-making: Māori Involvement in Aquaculture and Biotechnology. In Te Rito, J. & Healy, S. (Eds.), *Proceedings of the Traditional Knowledge Conference 2008*. (pp. 147-157) Auckland, New Zealand. Te Pae o te Maramatanga: Auckland.

Creswell, J. (2014). *Research design: Qualitative, Quantitative, and Mixed Methods Approaches* (Fourth ed.). California, USA: SAGE Publications, Inc.

Curtis, A., Ross, H., Marshall, G., Baldwin, C., Cavaye, J., Freeman, C., Carr, A., & Syme, G. (2014). The Great Experiment With Devolved NRM governance: Lessons From Community Engagement in Australia and New Zealand Since the 1980s. *Australasian Journal of Environmental Management*, *21*(2), 175-199, doi: 10.1080/14486563.2014.935747

Demsetz, H. (1967). Towards a Theory of Property Rights. *The American Economic Review*, *57*(2), 347-359. https://www.jstor.org/stable/1821637

Denmark, M. (2010). Managing the Global Commons. *The Washington Quarterly*, *33*(3), 165-182, doi: 10.1080/0163660X.2010.492347

Dixon, J., Ericksen, N., Crawford, J., & Berke, P. (1997). Planning under a Co-operative Mandate: New Plans for New Zealand. *Journal of Environmental Planning and Management*, *40*(5), 603-614, doi: 10.1080/09640569711967

Edwards, A., & Stephenson, W. (2013). Assessing the Potential for Surf Break Co-Management: Evidence from New Zealand. *Coastal Management*, *41*(6), 537-560, doi: 10.1080/08920753.2013.842681

Eggenberger., M, & Partidário, M. (2000). Development of a framework to Assist the Integration of Environmental, Social and Economic Issues in Spatial Planning. Im*pact Assessment and Project Appraisal*, *18*(3), 201-207, doi: 10.3152/147154600781767448

Ehler, C. & Douvere., F. (2009). *Marine Spatial Planning: a Step-by-step Approach Towards Ecosystem-based Management. Paris: Intergovernmental Oceanographic Commission and Man and the Biosphere Programme*. Retrieved from https://unesdoc.unesco.org/ark:/48223/pf0000186559

Fisheries Act, No 88. (1996). Retrieved from http://www.legislation.govt.nz/act/public/1996/0088/193.0/whole.html#DLM394192

Fisheries New Zealand. (2019). *Aquaculture Strategy*. Retrieved from https://www.mpi.govt.nz/growing-and-harvesting/aquaculture/strategy/

Gibbs, M. (2008). The historical development of Fisheries in New Zealand with respect to sustainable Development principles. *The Electronic Journal of Sustainable Development*, *1*(2), 23-33.

Grafton, Q., Squires, D., & Fox, K. (2000). Private Property and Economic Efficiency: A Study of a Common-Pool Resource. *The Journal of Law and Economics*, *43*(2), 697-714.

Guerin, K. (2003). *Property Rights and Environmental Policy: A New Zealand Perspective. New Zealand Treasury Working.* Retrieved from https://treasury.govt.nz/sites/default/files/2007-09/twp03-02.pdf

Hardin, G. (1968). The Tragedy of the Commons. *Science*. *162*(3859) 1243-1248. doi: 10.1126/science.162.3859.1243

Hardin, G. (1994). The tragedy of the Unmanaged Commons. *Trends in the Ecological & Evolution*, *9*(5), 199-199. https://doi.org/10.1016/0169-5347(94)90097-3

Hewison, G. (2015). The Resource Management Act 1991. In Salmon., P. & Grinlinton, D., (Eds.), *Environmental Law in New Zealand* (pp. 533-593). Wellington, New Zealand: Thompson Reuters New Zealand Ltd

Hildebrand, L., & Norrena, E. (1992). Approaches and Progress Toward Effective Integrated Coastal Zone Management. *Marine Pollution Bulletin*, *25*(1-4), 94-97. https://doi.org/10.1016/0025-326X(92)90194-B

Johnson, D. (2007). Reflections on the Bundle of Rights. *Vermont Law Review*, *32*(347), 247-272.

Krueckeberg, D. (1995). The Difficult Character of Property: To Whom Do Things Belong?'. *Journal of the American Planning Association*, *61*(3), 301-309. http://dx.doi.org/10.1080/01944369508975644

Lane, M. (2005). Public Participation in Planning: an intellectual history. *Australian Geographer*, *36*(3), 283-299. doi: 10.1080/00049180500325694

Layder, D. (2018). *Investigative research: Theory and Practice (First ed.)*. London: Sage Publications.

Macleod, C., & Moller, H. (2006). Intensification and Diversification of New Zealand Agriculture Since 1960: An Evaluation of Current Indicators of Land Use Change. *Agriculture, Ecosystems and Environment*, *115*(1), 201-218. https://doi.org/10.1016/j.agee.2006.01.003

Makgill, R. (2009). Public Property and Private Use Rights: Exclusive Occupation of the Coastal Marine Area in New Zealand. In Blosselmann, K., & Tava, V (Ed). *Water and Sustainability in Australasia, New Zealand Centre for Environmental Law Monograph Series*. Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1865008

Makgill, R., & Rennie, H. (2012). A Model for Integrated Coastal Management Legislation: A Principled Analysis of New Zealand's Resource Management Act 1991. *The International Journal of Marine and Coastal Law*, *27*(1), 134-165. https://doi.org/10.1163/157180812X620667

Makgill., R. & Rennie, H. (2011) "The Marine and Coastal Area Act 2011", *Resource Management Journal,* 1-7

Marine and Coastal (Takutai Moana) Act, No 3. (2011). Retrieved from http://www.legislation.govt.nz/act/public/2011/0003/latest/DLM3213131.html#DLM3213387

McGinnis, M., & Collins, M. (2013). A Race for Marine Space: Science, Values, and Aquaculture Planning in New Zealand. *Coastal Management*, *41*(5), 401-419, DOI: 10.1080/08920753.2013.822284

Meinzen-Dick, R., Brown, L., Feldstein, H., & Quisumbing, A. (1997). Gender, Property Rights, and Natural Resources. *World Development*, *25*(8), 1303-1315. https://doi.org/10.1016/S0305-750X(97)00027-2

Memon, A. (2002). Reinstating the Purpose of Planning within New Zealand's Resource Management Act. *Urban Policy and Research*, *20*(3), 299-308. doi: 10.1080/0811114022000005924

Memon, P., & Gleeson, B. (1995). Towards a New Planning Paradigm? Reflections on New Zealand's Resource Management Act. *Environment and Planning B: Planning and Design*, *22*(1), 109-124. https://doi.org/10.1068/b220109

Mills, J., & Birks, M. (2015). Qualitative Methodology: A Practical Guide. London: SAGE Publications Ltd.

Ministry for Primary Industries. (2013). *Guide to Establishing and Operating a Marine Farm*. Retrieved from https://www.mpi.govt.nz/dmsdocument/3678-guide-to-establishing-and-operating-a-marine-farm-in-new-zealand

Ministry for the Environment. (2009). *Fact Sheet 3: Improving Resource Consent Processes*. Retrieved from https://www.mfe.govt.nz/sites/default/files/Resource%20management%20amendment%20act%202009%20Fact%20Sheet%203.pdf

Ministry for the Environment., & Ministry of Primary Industries. (2017). *Proposed National Environmental Standard for Marine Aquaculture*. Retrieved from https://www.mfe.govt.nz/marine/marine-reforms/proposed-national-environmental-standard-marine-aquaculture

Ministry of primary Industries & Fisheries New Zealand. (2019) *National Environmental Standard for Marine Aquaculture – policy approval and agreement to draft regulations*. Retrieved from https://www.mfe.govt.nz/sites/default/files/media/RMA/national-environmental-standard-marine-aquaculture-policy-approval....pdf

Ministry of Primary Industries. (2011). *Aquaculture Legislation Reforms 2011 Guidance Note 1*. Retrieved from https://www.fisheries.govt.nz/dmsdocument/15940/direct

Mutch, C. (2005). *Doing Educational Research: A practitioner's guide to getting started*. Wellington. New Zealand: NZCER Press.

O'Reilly, M., & Nikki, K. (2015). *Advanced qualitative research: A guide to using theory*. London: SAGE Publication.

Ostrom, E. (1990). *Governing the Commons*. Cambridge. New York: Cambridge University Press.

Ostrom, E., Burger, J., Field, C. B., Norgaard, R. B., & Policansky, D. (1999). Revisiting the Commons: Local Lessons, Global Challenges. *Science*, *284*(5412), 278-282.

Peart, R. (2017). A 'Sea Change' in Marine Planning the Development of New Zealand's First Marine Spatial Plan. *Policy Quarterly*, *13*(2), 3-9. doi: https://doi.org/10.26686/pq.v13i2.4658

Rennie, H. (2002). *A Geography of Marine Farming Rights in New Zealand: Some Rubbings of Patterns on the Face of the Sea* (Doctoral thesis, Waikato University, 2002). Retrieved from https://researchcommons.waikato.ac.nz/

Rennie, H. (2009). Aquaculture Management Areas—An Example of why we Should not Rush to Ditch the RMA's Effects-based Approach? *Planning Quarterly*, *174*, 14–16.

Rennie, H. (2010). Marine (Aquaculture). Space Allocation: Assessing Transitional Challenges to Local Economies in New Zealand. *Local Economy: The Journal of the Local Economy Policy Unit*, 25(3), 190-209. https://doi.org/10.1080/02690941003784234

Rennie, H. G. (2006). A Brief History of the Last 40 Years of Marine Aquaculture Planning in New Zealand. In (Ed.) *The 8th Australasian Urban History/Planning History Conference* (pp. 429-441). Palmerston North: Massey University.

Rennie, H., White, R., & Brabyn, L. (2009). Developing a Conceptual Model of Marine Farming in New Zealand. *Marine Policy*, *33*(1), 106-117 https://doi.org/10.1016/j.marpol.2008.05.001

Resource Management Act, No. 69. (1991). Retrieved from http://www.legislation.govt.nz/act/public/1991/0069/latest/whole.html

Rodriguez., N. (2017). A Comparative Analysis of Holistic Marine Management Regimes and Ecosystem Approach in Marine Spatial Planning in Developed Countries. *Ocean & Coastal Management*, *137*, 185-197. https://doi.org/10.1016/j.ocecoaman.2016.12.023

Ruru, J. (2004). A Politically Fuelled Tsunami: The Foreshore/ Seabed Controversy in Aotearoa Me Te Wai Ponunamu/ New Zealand. *The Journal of Polynesian Society*, *113*(1), 57-72.

Rydin, Y., & Pennington, M. (2000). Public Participation and Local Environmental Planning: The Collective Action Problem and the Potential of Social Capital. *Local Environment*, *5*(2), 153-169. doi: 10.1080/13549830050009328

Schlager, E., & Ostrom, E. (1992). Property-Rights Regimes and Natural Resources: A Conceptual Analysis. *Land Economics*, *68*(3), 249-262

Shafer, C., Inglis, G., & Martin, V. (2010). Examining Residents' Proximity, Recreational Use, and Perceptions Regarding Proposed Aquaculture Development. *Coastal Management*, *38*(5), 559-574, doi: 10.1080/08920753.2010.511700

Thia-Eng, C. (1993). Essential Elements of Integrated Coastal Zone Management. *Ocean & Costal management*. *21*(1), 81-108. https://doi.org/10.1016/0964-5691(93)90021-P

Toki, V. (2008). Can the Developing Doctrine of Aboriginal Native title Assist a Claim Under the Foreshore and Seabed Act 2004? *Commonwealth Law Bulletin*, *34*(1), 21-41.doi: 10.1080/03050710801942597

Turner, M. (2017). Political Ecology III: The Commons and Communing. *Progress in Human Geography*, *41*(6) 795–802. doi: 10.1177/0309132516664433

Vaughn, K. (1978). John Locke and The Labour Theory of Value. *Journal of Libertarian Studies*, *2*(4), 311-326.

Wade, R. (1987). The Management of Common Property Resources: Collective Action as an Alternative to Privatisation or State Regulation. *Cambridge Journal of Economics*, *11*(2), 95-106. https://doi-org.ezproxy.lincoln.ac.nz/10.1093/oxfordjournals.cje.a035024

Wijkman, P. (1982). Managing the Global Commons. *International Organization*, *36*(3), 511-536. https://doi.org/10.1017/S0020818300032628

Yandle, T., & Dewees, C. (2008). Consolidation in an Individual Transferable Quota Regime: Lessons from New Zealand, 1986–1999. *Environmental Management*, *41*(9), 915-928. doi 10.1007/s00267-008-9081-y

Yin, R. (2012). *Applications of case study research* (3rd ed.). California: Sage Publications.

Appendix A

Interview Questions

Assessing the decision-making process during the transitional time period of renewing consents under the RMA.

Thank you for agreeing to be interviewed. I understand that you are an in important source of expertise to this research and your time is very valuable.

Just before we start, for the sake of simplicity, in this interview I am going to use the words "**renewal**" or "**replacement**" to refer to situations where an existing consent holder wishes to apply for a resource consent to continue marine aquaculture in the same location, but whose existing consent has or is about to expire. I realise that, technically, it is not a renewal, but a new consent to replace the existing consent and enable the existing aquaculture activity to be continued, but perhaps with new or different consent conditions. Is that clear?

Questions:

What is your professional background and current role within the organisation?

How does your organisation approach marine farm resource consent replacement?

- What agencies, if any, does your organisation consult with or collaborate with responding to the replacement of marine farm consents?
- What role do iwi play in this decision-making process when it comes to replacement of marine farm consents?
- Who might be other stakeholders? What role do they play?

What pieces of legislation plans and/or regulations do you work with the most in regard to the decision-making process for replacement marine farm consents?

- Do you believe that the collaboration is strong enough within on-going plan reviews?
- Do you believe that the Aquaculture Management Area, or AMA, method of allocating coastal marine space is good practice or not?
- Are there alternatives? Are they better or worse, and why?
- How confident are you/ or should an applicant be when renewing a coastal permit? And why?
- What implications does the Fisheries Act have on the decision-making process? ie the aquaculture decisions process?

- What are your thoughts on a dual perming system under the RMA and Fisheries Act?

What is your biggest concern about the large number of consents that are coming up for renewal in 2024?

- Any major obstacles or enablers in the process of consent renewal process?

What is your current view on the decision-making process for replacement marine farm consents?

- Do you know of people applying for a replacement consent 6 months prior to the expiry or between 6 and 3 months before the expiry to enable them to continue operating while the decision on the consent being made used at all? If so why? If not, why not?
- How much of a role does the applicants enforcement record have on the decision-making process?
- How much weight do you think applicants give to the current investment in the existing marine farm in making their application for a replacement consent?
- How much weight do you think consent officers and other decision-makers give to the current investment in the existing marine farm in making their application for a replacement marine farm?

How could the decision-making process of replacement marine farm consents be improved?

- Would you like to see more guidance from government on the decision-making process of replacement marine farm consents?
- Are there any documents that you think would especially inform my research (and where and how might I access these)?

Based on our discussion today surrounding replacement of marine farming consents, would you like to add anything else?

Appendix B

Case Law and Legislation Referenced

Case Law

Clearwater Mussels Limited v The Marlborough District Council [2019] NZHC 961

Environmental Defence Society v New Zealand King Salmon Limited [2014] NZSC 38

Port Gore Marine Farms Ltd v Marlborough District Council [2012] NZEnvC 72

Legislation

Aquaculture Reform (Repeals and Transitional Provisions) Act 2004

Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2011

Commercial Aquaculture Claims Settlement Act 2004

Fisheries Act 1986

Fisheries Act 1996

Foreshore and Seabed Act 2004

Marine and Coastal Area (Takutai Moana) Act 2011

Marine Farming Act 1971

New Zealand Coastal Policy Statement 2010

Proposed National Environmental Standard for Marine Aquaculture

Resource Management (Aquaculture Moratorium) Amendment Act 2002

Resource Management (Simplifying and Streamlining) Amendment Act 2009

Resource management Act 1991